

Article

The Families First Coronavirus Response Act

03.20.20

Texas Lawyer

On Wednesday, Congress approved and President Donald Trump signed the Families First Coronavirus Response Act (FFCRA). FFCRA provides new benefits to employees through two new laws: the Emergency Family and Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA). The requirements of FFCRA are set to take effect April 2 and expire Dec. 31. The elements of FFCRA that touch most directly on the employer-employee relationship are examined below.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

EFMLEA amends the Family and Medical Leave Act (FMLA) to require covered employers to provide up to 12 weeks of protected paid leave to eligible employees for a qualifying reason.

- **Eligible Employees:** Those who have been employed for 30 days.
- **Covered Employers:** Private employers with fewer than 500 employees and all public sector employers, but carve-outs exist regarding certain provisions for smaller businesses, and EFMLEA gives the Secretary of Labor (DOL) the authority to exempt even more small businesses and certain healthcare and emergency personnel. How the DOL will exercise this authority remains unclear.
- **Qualifying Reason:** The employee is unable to work (or telework) due to the need to care for the employee's child, because the child's school or place of care has been closed, or is unavailable, due to a public emergency.
- **Compensation:** The initial 10 days of leave may be unpaid, except that an employee may substitute any available paid leave for this unpaid leave. After the initial 10 days, the employer must provide paid leave equal to two-thirds of the employee's regular rate of pay for the remainder of the leave. For employees with varying schedules and pay, the paid leave must be equal to the average number of hours the employee was scheduled to work per day over the prior six-month period. In no event shall the total value of paid leave taken by an employee exceed \$200/day or \$10,000 in the aggregate.

EMERGENCY PAID SICK LEAVE ACT

EPSLA requires covered employers to provide eligible employees with paid leave when a qualifying reason exists or has been triggered.

- **Covered Employers:** Private employers with fewer than 500 employees and all public sector employers. Health care provider and emergency responder employers may be entitled to exclude their employees from this provision.
- **Eligible Employees:** All employees, regardless of their length of employment.
- **Paid Leave:** Employers must provide full-time employees with 80 hours of paid sick leave and part-time employees with two weeks of paid sick leave based on the average number of hours the employee worked during the prior six-month period.
 - ♦ For paid leave taken for self-care (reasons 1–3, below), the employee is entitled to paid leave at the employee's regular rate, capped at \$511/day and \$5,110 in the aggregate.
 - ♦ For paid leave taken to care of another individual (reasons 4–6 below), the employee is entitled paid leave at two-thirds of the employee's regular rate, capped at \$200/day and \$2,000 in the aggregate.
- **Qualifying Reasons:** An employee qualifies for EPSLA if the employee,
 - ♦ is subject to a federal, state or local quarantine related to COVID-19;
 - ♦ has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

- ♦ is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- ♦ is caring for an individual (not limited to family member) who is subject to qualifying reasons (1) or (2) above;
- ♦ is caring for a child while the child's school or place of care is closed, or the employee's child care provider is unavailable, due to COVID-19 precautions; or
- ♦ 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 DOL.

HOW WILL EMPLOYERS PAY FOR THESE BENEFITS?

Employers are responsible for all payments owed to qualifying and covered employees under both EFMLEA and EPSLA. However, the act provides a quarterly tax credit to employers (and certain self-employed individuals) to offset the cost of paid family and sick leave. Specifically, employers are eligible for a refundable tax credit of 100% of qualified family leave wages paid and sick leave wages paid against their employer-side payroll tax liability. If the credit value exceeds the employer's quarterly tax liability, the act provides that the excess will be treated as an overpayment and refunded.

FINAL THOUGHTS

FFCRA is the first of what is likely to be many measures adopted to assist Americans during these challenging times. Congress has been outspoken about the need to pass additional measures, including potential amendments to the Act. And while many appreciate the speed with which the legislature moved in enacting FFCRA, there has been much criticism of the act for exempting large employers and placing a potentially insurmountable burden on small- and medium-sized employers. As a result, the act could be modified further at any time, and the information in this article is subject to change before the Act takes effect.

To read the full article, [click here](#).

Primary Contacts



Sameer Karim

Houston
713.222.4050
skarim@munsch.com

Related Practices

Labor & Employment
Employment Litigation
Litigation
Employment Litigation