



WELCOME

THANK YOU FOR JOINING US

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COVID-19 - Impact of the Families First Coronavirus Response Act on Business

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9:00 TO 10:00 A.M.





Paul K. Rudoy, CPA/PFS

Managing Partner

H2R CPA

pkrudoy@h2rcpa.com



Lucas Rihely, CPA

Partner

H2R CPA

Irihely@cottrillarbutina.com



Business Solutions, Family Approach



Pamela Wilkins Connelly

Shareholder

Strassburger McKenna Gutnick & Gefsky

pconnelly@smgglaw.com



Business Solutions, Family Approach



Rachel Felton

Member

Metz Lewis Brodman Must O'Keefe LLC

rfelton@metzlewis.com



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Payroll Protection Program (PPP)

- Preliminary Update
- What we learned over the weekend
- Each bank's requirements are different
 - ✓ Some take a few minutes after completing the application
 - ✓ Some take hours after completing the application
- If you have not submitted yet and need help, contact us after this webinar



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Impact of the FFCRA's Emergency Paid Sick Leave

Pamela W. Connelly
pconnelly@smgglaw.com



**Strassburger McKenna
Gutnick & Gefsky**

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412.281.5423 | smgglaw.com

Introduction

COVID-19 has had an unprecedented impact.

- The legal landscape is rapidly changing
- New laws and executive orders
- Today's focus: the Families First Coronavirus Response Act (“FFCRA”)
- We decipher its meaning through its language, and the temporary federal rules and guidance
- These are evolving

FFCRA Overview

FFCRA Highlights for Businesses:

- **It is Temporary:** April 1 - December 31, 2020
- **The primary business impact:** the creation of two paid leave obligations
 - Emergency Paid Sick Leave (“EPSL”)
 - Expanded FMLA
- Focus in this segment: **EPSL**

FFRCA Overview

Which Employers are covered?

- Employers with fewer than 500 employees
- Most public employers with 1 or more employees

This includes:

- Non-profit organizations
- Religious entities

Opportunities for FFCRA Exceptions

Certain employers may elect to be excluded from the FFCRA employees who are:

- Health care providers
- Emergency responders

Also excluded are:

- Specifically excluded governmental agencies such as the United States Post Office

A limited exemption for small employers will be discussed later.

How Do You Count Employees?

Include all:

- full time and part time employees
- temporary employees
- employees on leave
- all employees at all domestic worksites

Exclude:

- those laid off
- independent contractors

Do your count **“at the time leave is to be taken”**

Do You Count Employees at Related Corporations?

- Typically, no, except where the entities are FLSA “joint employers” or FMLA “integrated employers”
- Key factors: the power to hire or fire; actually exercising substantial control over employment terms or conditions; setting pay; and keeping employee records.
- Additional key factors: common management, operational entwinement, centralized control of labor relations and degree of common control/ownership.

The ESPL: Which Employees are Eligible?

All employees, meaning:

- Full time
- Part time
- Temporary employees
- Day laborers
- No minimum days of service required
- But not independent contractors

What is the EPSL?

Where a “qualifying reason” exists, the EPSL is an employee entitlement to:

- A paid leave in addition to any existing benefits and paid time off
- 80 hours of paid sick leave for full-time employees
- The equivalent of the average number of hours over two weeks for part time employees
- If caring for another, can get 2/3 pay for up to two weeks

How Can the EPSL be Used?

- Employers cannot make employees use other leaves first.
- EPSL can only be used this year.
- EPSL does not carry over into 2021.
- Employers have no obligation to payout for unused EPSL.
- Employees must have a “qualifying reason” to get to use EPSL.

What is a “Qualifying Reason” for EPSL?

Where the Employee is unable to work, and:

1. Is 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;
3. is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

Qualifying Reasons, cont.

4. is caring for an individual who needs to quarantine or isolate under government order or health care advice;
5. is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider is unavailable, due to COVID-19; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Some Nuances in these Six Reasons

- Quarantine or isolation order includes a “broad range of orders” including stay-at-home and shelter in place orders that cause the employee to be unable to work even though the employer has work available.
- But, an employee cannot take EPSL where there is no work.

Can EPSL be Taken Intermittently?

- Only if employer and employee agree
- If working on-site, must be taken in full days
- If on-site, and qualifying reasons 1-4 and 6 are invoked, employee must take leave for full days and consequently until qualifying reason ends
- If you can telework, no right to paid leave without qualifying reason
- If teleworking and have qualifying reason, can use EPSL intermittently

How Much will the EPSL Cost?

The EPSL Benefit Amount is paid at the employee's regular rate but:

- Capped: \$511 per day and \$5,110 in the aggregate when used by employee for their own condition
- Capped: \$200 per day and \$2,000 in the aggregate when used for family reasons

However, this costs could be offset by a tax credit opportunity, which will be discussed later.

EPSL Notice Requirements

After the first sick day, Employer may require an employee to follow reasonable notice procedures in order to continue receiving the paid sick leave.

- Gather name, dates, and qualifying reason.
- Get an affirmation that employee is not able to work due to the qualifying reason.

Your decisions will involve a fact specific analysis.

Recordkeeping

For four years, retain the information you will need to justify a federal tax credit, including:

Documentation about the leave request

Documentation about the leave approval

How much the employer spent on pay and benefits

How such costs were calculated

Next Steps

- Keep up to date – a heavy lift
- Post the required notice (see the link to the poster resource below)
- Develop forms:
 - For leave requests
 - For your responses to leave requests
- Develop recordkeeping systems

Practical Tips when Administering EPSL

- Keep the Law's purpose in mind
- Do get the information you need
- Do not be a stickler
- Pause, analyze and assess
- Maintain records, separating medical information
- Be consistent and fair

Resources

DOL Temporary Rule: <https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>

DOL Press Release:

- <https://www.dol.gov/newsroom/releases/whd/whd20200401>

DOL Guidance:

- <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

- <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

- <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

IRS Guidance:

- <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1>



EXPANDED FMLA LEAVE

- Employees who have been employed for at least 30 days may take up to 12 weeks of leave to care for a son or daughter if the child's school or place of care has been closed or the childcare provider is unavailable due to COVID-19 related reasons.
- Son or Daughter means "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 year of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability."



EXPANDED FMLA LEAVE

Differences between Traditional FMLA and Expanded FMLA:

- Definition of Covered Employer:
 - Traditional: 50 or more employees w/in 75 miles
 - Expanded FMLA: Fewer than 500 employees
- Definition of Covered Employee:
 - Traditional: Employee has worked for the employer for at least one year and worked at least 1,250 hours in the last 12 months
 - Expanded: Employee has worked for the employer for 30 days
- Reasons for Leave:
 - Traditional: Birth of a child, placement of a child for adoption or foster care and the care of such child; employee or family member's serious health condition; military exigency
 - Expanded: Cannot work or telework due to need to care for a child whose school or childcare provider is closed due to COVID-19



EXPANDED FMLA LEAVE

- First 2 weeks are unpaid, although employees may elect to use emergency paid sick leave or accrued PTO under the company's policies.
- Remaining 10 weeks are paid at a rate equal to 2/3 of the employee's regular rate of pay for the number of hours the employee would otherwise normally be scheduled to work.
- There is a cap of \$200/day or \$10,000 total.



REQUEST FOR EXPANDED FMLA LEAVE

When an employee requests expanded FMLA leave the employee must provide:

- (1) The employee's name;
- (2) The date(s) of the requested leave;
- (3) A statement that the employee is unable to work or telework because the employee needs to care for a son or daughter because the child's school or place of care has been closed or the childcare provider is not available due to COVID-19 related reasons;
- (4) The name of the child being cared for;
- (5) The name of the school or place of care that has closed or become unavailable;
- (6) A representation that no other suitable person can care for the child for the duration of the requested leave; and
- (7) If the child is older than 14 years of age, a statement that special circumstances exist requiring the employee to provide care.



EXPANDED FMLA LEAVE

- Expanded FMLA leave can be taken intermittently, if the employer and employee agree.
- Employees taking expanded FMLA leave (and emergency paid sick leave) have job protection.
 - An employee is entitled to be restored to the same or equivalent position upon returning to work, unless employee would have been laid off regardless of leave (e.g. mass layoff).
 - *Possible* job restoration exception for employers with fewer than 25 employees.
- An employee's use of traditional FMLA limits the employee's use of expanded FMLA leave.
 - An employee is only entitled to 12 weeks of leave in a 12-month period.
- Healthcare coverage must continue on the same terms and conditions during FMLA leave.



EXPANDED FMLA EXEMPTION

Small employers may not be required to provide an employee with paid emergency sick leave and extended FMLA leave due to school or childcare closures where:

1. The employer has fewer than 50 employees;
2. Leave is requested because the child's school or place of care is closed or a childcare provider is unavailable due to COVID-19 related reasons; and
3. An authorized officer of the business determines that providing such leave would jeopardize the viability of the business as a going concern because:
 - Providing the leave would result in expenses and financial obligations exceeding revenues and cause the business to cease operating;
 - The absence of the employee requesting such leave would create a substantial risk to financial health or operations; or
 - There are not sufficient workers who are willing, qualified, and available to perform labor and services and such labor and services are necessary to operations.



FFCRA MISCELLANEOUS NOTES

- No Interference, Discrimination, or Retaliation – Employers cannot deny employees leave or discriminate or retaliate against employees for using such leave.
- Enforcement – The U.S. Dept. of Labor will observe a 30-day period of non-enforcement, as long as the employer acted reasonably and in good faith to comply with the law. The period of non-enforcement runs through April 17, 2020.
- State Law – Remember to check your State law

Families First Coronavirus Response Act

Tax Credits for FFCRA Paid Sick and Family Leave

- There shall be allowed as a credit against the 6.2% OASDI (Social Security) tax an amount equal to the required wages paid as qualified paid sick leave or qualified paid emergency family and medical leave.
- Effective for qualified leave beginning April 1, 2020 and ending December 31, 2020.
- This credit is refundable, meaning that a credit in excess of the employer liability for the 6.2% tax will be treated as an overpayment and may be refunded.
- Wages required to be paid under the Act are not subject to the 6.2% OASDI (Social Security) tax.
- Self-employed taxpayers are eligible for a credit against 50% of self-employment tax.



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Allowable credit

- Employee's rate of pay:
 - ✓ If leave is taken for reasons 1, 2, or 3 under the Act
 - The employee is paid based on the number of hours they would normally work, and
 - The greater of:
 - The employee's regular rate of pay,
 - The applicable minimum wage (federal, state, or local)
 - The credit is limited to wages paid of \$511 per day, or \$5,110 in aggregate



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Allowable credit (cont.)

- Employee's rate of pay:
 - ✓ If leave is taken for reasons 4, 5, or 6 under the Act:
 - The employee is paid based on the number of hours they would normally work, and
 - The greater of:
 - Two-thirds of the employee's regular rate of pay,
 - The applicable minimum wage (federal, state, or local)
 - The credit is limited to wages paid of \$200 per day, or \$2,000 in aggregate
 - ✓ Credit for wages paid for emergency family medical leave is limited to \$200 per day and \$10,000 in the aggregate for the 10 weeks
- Credit is increased by the employer's 1.45% Medicare tax and increased by health care costs allocable to the employee for those covered days.



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Claiming the credit

- The employer will claim the credit on its federal employment tax returns, e.g. quarterly Form 941.
- Employers may reduce their federal employment tax deposits in anticipation of receiving the credit.
- If there are insufficient federal employment taxes to cover the amount of the credits, an employer may request an advance payment of the credits from the IRS.
 - ✓ Form 7200, Advance Payment of Employer Credits Due to COVID-19, is now available.
- Advance payments, reduced deposits, and such occurring during a calendar quarter will be reconciled on that quarter's Form 941.
- Failure-to-deposit penalties are waived if the failure to deposit was done in reasonable anticipation of the credit being allowed.
- Gross income shall be increased by the amount of the credit.



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Self-employed taxpayers

- For self-employed individuals, average daily self-employment income is calculated to determine regular rate of pay. This is equal to net self-employment income for the taxable year divided by 260
 - ✓ Must be carrying on a trade or business as defined within 1402 of the IRC
 - ✓ Must meet the test of “would have been entitled to receive paid leave or paid family leave if the individual were an employee of an employer.”
 - ✓ Daily limits (\$200/\$511) applicable to employee wages apply to the net self-employment earnings taken into account for this credit.
- Credit will be claimed on the taxpayer’s Form 1040 for Tax Year 2020
- Taxpayer may reduce estimated tax payments in anticipation of the credit amount



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Questions / Discussion

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