

Family First Coronavirus Response Act Updates

On March 18, 2020, President Trump signed the Family First Coronavirus Response Act (FFCRA). This Act provides two buckets of emergency leave – Emergency Family and Medical Leave Expansion Act (EFMLEA) and Emergency Paid Sick Leave Act (EPSLA) – for workers in relation to the COVID-19 pandemic.

When details were first released regarding these two types of leave, there were many unanswered questions with very little guidance. Recently, the Department of Labor (DOL) has provided guidance on these frequently asked questions relating to this new law.

Below is a high-level summary of some of the clarification DOL released:

1. Effective date – Even though the Act was supposed to go into effect on April 2, 2020, the DOL decided to set the effective date as **April 1, 2020**. The law will still expire on December 31, 2020.
2. 500 Employee Threshold – The law applies to private sector employers with 499 or fewer employees. Many employers who have an employee count close to that threshold have been wondering how they calculate headcount to see if they must comply. The DOL has stated that employers should be gathering headcount, each time an employee requests leave. Employees who should be counted include:
 - Full-time and part-time employees
 - Only employees in the United States
 - Employees currently on leave
 - Temporary employees who are jointly employed by the employer and another company
 - Day laborers supplied by a temporary agency
3. Overtime Hours – The Act requires employers to pay an employee for hours the employee would have normally been scheduled to work. This means if an employee was normally scheduled to work more than 40 hours in a week, you must calculate that overtime into the pay that is due. It is important to note that this does not apply to the EPLSA, as that only requires 80 hours of paid time over a two-week period.
4. Paid Leave Prior to 4/1/2020 – With the Act going into effect April 1, 2020, any paid leave that was provided prior to the effective date will not count towards the new requirements and will most likely not be eligible for tax credits.

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5. Documentation – Employers should require employees to submit documentation to verify their need for emergency paid sick leave or emergency family medical leave. The DOL also points employers to the IRS for other documentation required for tax credits.
 6. Increments – Emergency family medical leave is expected to be used in full-day increments only. Employers may allow employees to use this time intermittently for purposes of child care only. Both the employee and the employer must agree upon an intermittent schedule.
 7. Employers on Current Layoff – If an employer has closed a worksite prior to April 1, 2020, then the employee will not be eligible for emergency paid sick leave or expanded family medical leave. These employees will have the ability to apply for unemployment.
 8. Small Employer Exemptions – The DOL provided some clarification on if small employers with fewer than 50 employees may claim exemption under EFMLEA and EPSLA. For more information on this issue, please refer to the [DOL's Families First Coronavirus Response Act: Questions and Answers](#).

If you have questions, contact:

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