

Emergency Family and Medical Leave Expansion Act

The EFMLA provides up to twelve weeks of protected leave for employees who are unable to work or telework due to a need to care for a child under the age of 18 whose school or child care provider closed or is otherwise unavailable due to COVID-19. This leave is available immediately to employees who have worked for a Covered Employer for at least 30 days prior to the start of the leave. Of the 12 weeks provided under the EFMLA, 10 weeks are paid with the initial 10 days unpaid provided however that an employee can substitute accrued paid time off during those initial 10 days. The pay required under the EFMLA is set at 2/3 the regular rate of pay subject to a cap of \$200 per day and \$10,000 in the aggregate.

What Employers Need to Do

Covered Employers need to comply with the EFMLA and EPSLA when they go into effect. Additionally, employers cannot discriminate against employees that take EPSLA leave and must retain the position for employees that take EFMLA leave unless the employer has less than 25 employees and meets certain criteria.

Covered Employers also need to post notices prepared or approved by the Secretary of Labor relating to the EPSLA in their workplaces. Please note that existing notice requirements and postings already exist under the FMLA and employers covered by the Family and Medical Leave Act must continue to comply with the FMLA. Employers should also track time for leave granted under the FFCRA both for the purposes of applying for tax credits available under the FFCRA and compliance purposes generally.

The FFCRA also granted the Secretary of Labor authority to issue regulations exempting businesses that employ less than 50 employees from both the EPSLA and EFMLA where complying with the EPSLA and EFMLA would affect jeopardize a business as a going concern. While this may offer an escape from the EPSLA and/or EFMLA to interested and eligible employers, there is no guarantee that the process to receive or qualify for an exemption will be less than the cost of complying with the EPSLA and EFMLA.

Please note that the above is a non-exhaustive overview of the EPSLA and EFMLA and not intended as a substitute for legal advice. If you have any questions concerning the EPSLA or EFMLA, please contact Michael W. Schauer.