

# Summary Comparison of Emergency FMLA and Emergency Paid Sick Leave Provisions of Families First Coronavirus Response Act

**Enacted Date:** March 18, 2020

**Effective Date:** April 1, 2020\*

**EE = employee    ER = employer**

This is a summary only. For detailed information, please see the articles on the [Emergency FMLA](#) and [Emergency Paid Sick Leave](#).

	Emergency FMLA	Emergency Paid Sick Leave
Name of Provision	Emergency Family and Medical Leave Expansion Act	Emergency Paid Sick Leave Act
Effective Date	April 1, 2020* through December 31, 2020	Same
Employer Size	Fewer than 500 employees.  All public employers.	Same
Eligible Employee	EE worked for ER at least 30 calendar days.  Employers of health care or emergency responder EEs may elect to exclude such employees from this leave.	All employees
Purpose for Leave	EE must be unable to work or telework due to need leave of care for child under 18 because school or daycare was closed, or child care provider is unavailable, due to CV19 declared public health emergency.  “Child care provider” means a provider who receives compensation for providing child care services on a regular basis.	To extent EE is unable to work or telework and needs leave due to: <ol style="list-style-type: none"> <li>1. EE is ordered by government agency to quarantine or self-isolate related to CV19.</li> <li>2. EE has been advised by health care provider to self-quarantine due to CV19 concerns.</li> <li>3. EE is symptomatic and is seeking a medical diagnosis.</li> <li>4. To care for an individual who is subject to an order or recommendation such as described in (1) and (2) above.</li> <li>5. Care for a child if the school or daycare has been closed, or the child care provider of such child is unavailable, due to coronavirus.</li> <li>6. EE is experiencing any other substantially similar condition as determined by HHS.</li> </ol>

\*Unless the Administration declares an earlier effective date.

*Disclaimer: This article is not legal advice. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps business must take under applicable laws.*

	Emergency FMLA	Emergency Paid Sick Leave
Paid Leave	<p>First 10 days unpaid (but see emergency paid sick leave).</p> <p>EE may, but cannot be required to, use accrued available vacation, personal, medical, or sick leave.</p> <p>Thereafter, paid at 2/3rds regular pay, capped at \$200/day and \$10,000 aggregate.</p> <p>See bill for people with varying schedules.</p>	<p>Full time employees: 80 hours.</p> <p>Part time employees: Hours equal to average two weeks of work.</p> <p>Base pay is EE's FLSA regular rate or local minimum wage (whichever is greater).</p> <p>For reasons (1), (2), and (3) above, paid leave is 100% of base pay, capped at \$511/day and an aggregate of \$5,110.</p> <p>For reasons (4), (5), and (6) above, pay is 2/3rds base pay, capped at \$200 per day and \$2,000 aggregate.</p> <p>EE can choose whether to use Emergency Paid Leave, or the employer's otherwise provided paid leave.</p>
Job Restoration	<p>Except as below, usual FMLA rules.</p> <p>ER &lt;25 EEs do not have to restore when the following conditions are met:</p> <ul style="list-style-type: none"> <li>• EE took the Emergency FMLA leave.</li> <li>• Position no longer exists due to economic or operating conditions of ER that affect employment AND are caused by CV19 emergency during the period of leave.</li> <li>• ER makes reasonable efforts to restore to an equivalent position.</li> </ul> <p>AND</p> <ul style="list-style-type: none"> <li>• If restoration to an equivalent position fails, ER makes reasonable efforts for one year to contact employee to restore to an equivalent position. <ul style="list-style-type: none"> <li>» One (1) year starts on earlier of date qualifying need concludes OR date 12 weeks after employee's leave for this reason commences.</li> </ul> </li> </ul>	<p>No specific provisions, but termination in retaliation for taking or seeking E-PSL is prohibited.</p>

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	<b>Emergency FMLA</b>	<b>Emergency Paid Sick Leave</b>
Tax Credits	<p>Covered private sector ERs providing the mandated paid leave above will receive a tax credit of 100% of the paid benefits up to the per employee caps.</p> <p>The credit is applied against payroll tax liability the ER has in a calendar quarter, and is refundable if the amount of the credit exceeds the ER's liability for that quarter.</p> <p>Per employee caps for paid portion of FMLA leave: \$200 per day and \$10,000 total.</p>	<p>Covered private sector ERs providing the mandated paid leave above will receive a tax credit of 100% of the paid benefits up to the per employee caps.</p> <p>The credit is applied against payroll tax liability the ER has in a calendar quarter, and is refundable if the amount of the credit exceeds the ER's liability for that quarter.</p> <p>Per employee caps:</p> <ul style="list-style-type: none"> <li>• For reasons (1), (2), and (3) above: \$511 per day and \$5,110 total.</li> <li>• For reasons (4), (5), and (6) above: \$200 per day and \$2,000 aggregate.</li> </ul>

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