

The Families First Coronavirus Response Act was passed by the Senate and signed by President Trump on March 19, 2020. The Act provides for two paid leaves that employers across the United States must provide to employees in response to the coronavirus epidemic. The Act is effective in 15 days and applies to employers with 1 to 499 employees. It expires on December 31, 2020. The Act provides for two sources of paid leave: Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

### **Emergency Paid Sick Leave Act (EPSLA)**

Covered Employees: All employees.

Covered Employers: Employers with fewer than 500 employees.

Amount of Leave:

- Full time employees: 80 hours of paid leave
- Calculated at their regular rate of pay (as calculated by the FLSA) or the minimum wage, whichever is greater.
- Part-time employees: Average number of hours worked over a two-week period.
- If employee works a variable schedule, it is the average number of hours they worked per day over the previous six months. If the employee has not worked this long, it is the reasonable expectation of the employee at the time of hire of the average number of hours per day the employee would normally be scheduled.

The Emergency Paid Sick Leave Act sets forth six covered reasons qualifying for paid sick leave, and a corresponding rates of pay for the employee and a cap on payments to the employees depending on the reason for leave:

<u>Covered Reason For Leave</u>	<u>Rate of Pay</u>	<u>Cap on Payments</u>
(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19	The employee’s regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).	\$511 per day and \$5,110 in the aggregate
(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19	The employee’s regular rate of pay	\$511 per day and \$5,110 in the aggregate

(3) The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.	The employee’s regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).	\$511 per day and \$5,110 in the aggregate
(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).	Two-thirds of the employee’s regular rate of pay.	\$200 per day and \$2,000 in the aggregate
(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions.	Two-thirds of the employee’s regular rate of pay.	\$200 per day and \$2,000 in the aggregate
(6) The employee 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 Secretary of Labor.	Two-thirds of the employee’s regular rate of pay.	\$200 per day and \$2,000 in the aggregate

Employers cannot require employees to use any other leave prior to using the Emergency Paid Sick Leave.

Notice requirements: Employers must post a notice in conspicuous places on the premises of a notice to be prepared by the Secretary of Labor. The Secretary of Labor has 7 days after the enactment of the Act to make the notice publicly available.

The Act cannot not diminish the rights or benefits of employees provided under any other Federal, State, or local law, collective bargaining agreement, or existing employer policy.

Employers are not required to pay out any unused Emergency Paid Sick Leave at the end of employment.

## Emergency Family and Medical Leave Expansion Act

Eligible employees: An employee who has been employed for at least 30 calendar days.

Covered employers: An employer with fewer than 500 employees.

Qualified reasons for paid FMLA leave: When the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency (with respect to a COVID-19 declared by a Federal, State, or local authority), the employee may take up to 12 weeks of leave.

Amount of paid leave:

- First 10 days may be unpaid (but employee may use other paid leaves during this time)
- Paid at no less than two-thirds of the employee's regular rate of pay (as determined by the FLSA) and the number of hours the employee would normally be scheduled to work for up to 12 weeks.
- Paid leave shall not exceed \$200 per day and \$10,000 in the aggregate.

Reinstatement rights: Employees are entitled to reinstatement to the same position or an equivalent position, unless the employer employs fewer than 25 employees. In that case, the employer must make reasonable efforts to provide the employee with a position or an equivalent position for 1 year after the "public health emergency concludes" or 12 weeks after commencement of the leave, whichever is earlier.

The Act provides payroll **tax credits** granted to employers to offset the costs associated with these employer provided mandates. This is a concern for many business owners, who have been forced to close or substantially reduce their operations, and now must find extra money for these payments and wait for a tax credit.