



COVID-19 Employment and Human Resources Issues

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Effective April 1, 2020, through December 31, 2020
- Applies to **all** state and local government employers, as well as private employers that have fewer than 500 employees
 - Employer may exclude health care providers and emergency responders
- Emergency Paid Sick Leave – up to two weeks
- Extended Family Medical Leave – up to 12 weeks

•EMPLOYEE RIGHTS

•PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

•The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

• PAID LEAVE ENTITLEMENTS

•Generally, employers covered under the Act must provide employees:

•Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at $\frac{2}{3}$ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

•A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

• ELIGIBLE EMPLOYEES

•In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

• QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

•An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

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| <ol style="list-style-type: none"> 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; 2. has been advised by a health care provider to self-quarantine related to COVID-19; 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none"> 1. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or 2. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
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• ENFORCEMENT

•The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information

or to file a complaint: 1
866-487-9243 TTY: 1



877-889-5627



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Emergency Paid Sick Leave

- Eligible at start of employment
- Duration of leave:
 - Full-time employees – up to 80 hours
 - Part-time employees –
 - 14 times the number of hours the employee was scheduled per calendar day, averaged over the 6-month period ending on the date on which the leave is taken, OR
 - 2 times the number of hours an employee was scheduled to work per workweek, averaged over the 6-month period ending on the date on which the leave is taken



Emergency Paid Sick Leave (continued)

- 100% pay, up to \$511 daily and \$5,110 total if the employee is unable to work, **including telework**, because the employee:
 - is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
 - has been advised by a health care provider to self-quarantine related to COVID-19; or
 - is experiencing COVID-19 symptoms and is seeking a medical diagnosis



Emergency Paid Sick Leave (continued)

- Two-thirds pay, up to \$200 daily and \$2,000 total if the employee is unable to work, **including telework**, because the employee:
 - is caring for an individual who is subject to a Federal, state, or local quarantine or isolation order OR has been advised by a health care provider to self-quarantine related to COVID-19;
 - is caring for his or her child whose school or place of care is closed or otherwise unavailable due to COVID-19 related reasons; or
 - is experiencing a substantially similar condition specified by the U.S. Department of Health and Human Services



EPSL - overlap with other leave

- EPSL is **in addition to** any form of paid or unpaid leave provided by law, policy, or collective bargaining agreement
- The employer may not require the employee to use other leave concurrently with EPSL.
- **However**, the employee may opt to use available paid leave to “top off” the maximum per day, although the tax credit applies only to the amount allowed under the Act.



Extended Family Medical Leave

- Eligible after 30 days of employment
- Available if employee is unable to work, **including telework**, because the employee is caring for his or her child whose school or place of care is closed or otherwise unavailable due to COVID-19 related reasons.
- Duration of leave:
 - Up to 12 weeks
 - First two weeks are unpaid
 - Last 10 weeks are paid at 2/3 regular rate of pay, up to \$200 per day or \$10,000 total



EFML - overlap with other leave

- For the first two weeks of EFML, the employee may choose, if the employer agrees, to use PTO or EPSL.
- For the last 10 weeks of EFML, the employer may choose, and the employer may require the employee, to use available paid leave to “top off” the maximum per day during the ten-week paid period, although the tax credit applies only to the amount allowed under the Act.



Overlap – Leave to Care for Son/Daughter

- The need to care for a son or daughter whose school or place of care is closed is a qualifying reason for both EPSL and EFML.
- The employee can opt to use the two-week EPSL benefit concurrently with the first two weeks of unpaid EFML so that the entire 12 weeks is paid at two-thirds of the employee’s regular rate of pay



Documentation – All FFCRA Leave

Retain FFCRA documentation for **four years**.

- Employee name
- Dates for which leave is requested
- Qualifying reason for leave
- Oral or written statement that employee is unable to work due to qualifying reason



Additional Documentation – Quarantine/Isolation/Illness

- Name of governmental entity or health care provider that advised the employee to self-quarantine or isolate
- If the person who has been advised to quarantine or self-isolate is not the employee, the name of that person and his or her relationship to the employee



Additional Documentation – Leave to Care for Son/Daughter

- Name of son/daughter being cared for
- Name of the school or place of care that is closed or unavailable
- Representation that no other person will be caring for the son/daughter during leave time
- If child is over 14 and care is needed during daylight hours, representation that special circumstances exist requiring such care



FFCRA FAQs

- Can leave under the FFCRA be taken intermittently?
- Is EFML in addition to regular FMLA leave?
- Does the employee continue to receive health insurance during leave under the FFCRA?
- Can an employee collect unemployment while he or she is on leave under the FFCRA?
- Can an employee who traveled to a “hot spot” take leave under the FFCRA?
- Are employees entitled to reinstatement after FFCRA leave?

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AMERICANS WITH DISABILITIES ACT

- Requires reasonable accommodations for employees with disabilities
- Prohibits discrimination on the basis of a disability
- Limits disability-related inquiries and medical examinations

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ADA – Reasonable Accommodations

- COVID-19 is likely not itself a disability that requires a reasonable accommodation
- **But** a request for accommodation to reduce the risk due to a serious medical condition that places an employee at higher risk should be treated as a request for an accommodation under the ADA.

Slide 15

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Slide 16

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ADA – Inquiries and Examinations

- The ADA generally prohibits employers from making disability-related inquiries and requiring medical examinations of employees.
- But the ADA does not prevent employers from following public health guidelines for employers with respect to COVID-19.

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ADA – Hiring Practices

- Employers **may** screen applicants for symptoms of COVID-19 after making a conditional offer, as long as it does so for all entering employees in the same type of job
- If an applicant has COVID-19 or symptoms of it:
 - Employer **may** delay the start date
 - Employer **may** withdraw the offer if it needs the applicant to start immediately

Slide 17

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Slide 18

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ADA – Employee Screening

- An employer **may**:
 - Send home an employee with COVID-19 or associated symptoms
 - Ask employees who are ill about their symptoms to determine whether they have COVID-19
 - Take employees' temperatures, subject to confidentiality requirements
 - Ask about exposure during travel, even if it was personal
 - Require a doctor's note certifying fitness to return to work (though doing so may be impractical)

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ADA – Workplace Conduct

- Employers may **require** employees to wear PPE to reduce transmission, subject to reasonable accommodation requirement
- Employers may **require** employees to adopt infection-control practices, *e.g.*, hand-washing
- Employers may **encourage** telework (and telework may be a reasonable accommodation for high-risk employees)

Slide 19

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Slide 20

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OSHA Considerations

- COVID-19 **can** be a recordable illness if a worker is infected as a result of performing their work-related duties; consult OSHA regulations/website.
- Employees may refuse to work only if:
 - They have asked the employer to eliminate the danger, and the employer failed to do so;
 - The employee refused to work in "good faith," *i.e.*, he or she genuinely believed an imminent danger existed; and
 - A reasonable person would agree there is a real danger of death or serious injury; and
 - There is not enough time to get the situation corrected through regular enforcement channels (*e.g.*, requesting an OSHA inspection)
- Review OSHA's *Guidance on Preparing Workplaces for COVID-19*

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CARES Act/Unemployment Benefits

- Kentucky has allowed individuals who left employment due to a reasonable fear that exposure at work will cause a negative impact on their health.
- **However**, the Cabinet recently clarified that "[d]espite these flexibilities, a central requirement of UI eligibility has always been and still is, that an individual is eligible for UI if they are separated from their job due to no fault of their own."
- Further, "[i]f an employer provides reasonable accommodations for employees at their workplace or offers an option to telecommute, the employee must work if it is offered by the employer."
- The Cabinet also reiterated the employer's right to contest any employee's claim and stated that claims will be decided on a case-by-cases basis if the employer and employee disagree about what constitutes a reasonable accommodation.

Slide 21

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Slide 22

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QUESTIONS?

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