

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Emergency Paid Sick Leave Act (EPSL)

Requires 80 hours of paid leave for full-time employees. For part-time employees, requires pay for the average number of hours the employee works over a two-week period (determined based on their prior two-week average).

Leave is available to eligible employees:

1. When the employee is subject to a government quarantine or isolation order related to COVID-19.
2. When the employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns.
3. When the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. When the employee is caring for an individual (not just a family member) who is subject to a quarantine order or health care provider advice to self-quarantine.
5. When the employee is caring for a child because the school or childcare place has been closed, or the childcare provider is unavailable, due to COVID-19 precautions.

For leave taken for the employee's own coronavirus-related reasons (1–3 above), leave must be paid at the employee's full rate of pay. For leave taken for reasons 4 or 5, leave must be paid at two-thirds of the employee's full rate of pay.

The amount of leave paid is capped at \$511/day (\$5,110 total) for leave taken for the employee's own coronavirus-related reasons, and at \$200/day (\$2,000 total) for leave taken to care for another individual or because of childcare issues.

Leave must be provided immediately regardless of how long the person has been employed; however, health care providers may be excluded.

Employers cannot require that employees use other paid leave before using EPSL.

Employers are required to give notice to employees of their right to leave under the Act. The U.S. Secretary of Labor will release a suitable notice no later than March 25.

Wages paid under the EPSL are not subject to the employer's portion of social security payroll taxes. Income tax withholding applies. Employers required to pay wages under the Act are eligible for a refundable federal tax credit that will offset their share of social security taxes.

EPSL effective April 2 unless the U.S. Department of Labor issues rules making the law go into effect earlier.

Emergency Family and Medical Leave Expansion Act

Requires 10 days of unpaid public health emergency leave (PHEL) when an employee must care for an under 18 child because of a school closure or other lack of childcare caused by COVID-19. Employees would have EPSL during these first 10 unpaid days of PHEL. After the first 10 days, employers must provide paid PHEL at two-thirds of the employee's normal pay rate for the duration of the leave (until the earlier of when the situation requiring PHEL has ended or when the employee has exhausted his or her 12-week FMLA entitlement).

PHEL is available only in situations when the employee is unable to work (or telework) due to a need to care for the employee's under 18 child if the school or place of childcare has been closed, or if the childcare provider is unavailable, due to a COVID-19-related emergency declared by a federal, state, or local authority.

Does not expand the amount of FMLA leave an employee is entitled to in the applicable 12-month period. The employer is required to provide PHEL until whichever is earlier: (1) the date when the condition requiring PHEL ends; or (2) the date when the employee exhausts their 12-week FMLA entitlement. If an employee has already exhausted 12 weeks of FMLA leave at the time when the need for PHEL arises, the employee is not entitled to take PHEL.

Anyone employed for at least 30 calendar days is eligible for the leave; however, health care providers may be excluded.

PHEL is based on the rate of pay that is at least two-thirds of the employee's regular rate of pay. The amount of pay is capped at \$200/day and \$10,000 total.

PHEL is based on the number of hours the employee would normally be scheduled to work. For employees whose schedule varies from week to week, the employer must use the average number of hours the employee was scheduled per day over the past six month period. If the employee did not work over the past six months, PHEL should be based on the average number of hours the employee was expected to work when hired.

The Act does not address whether employees are permitted to substitute full paid leave under other employer policies in lieu of PHEL that is paid at two-thirds of the employee's normal pay rate. The statute is also silent on whether an employer may require an employee to substitute other paid leave in lieu of PHEL.

Employers are required to give notice to employees of their right to PHEL.

Employees who take PHEL are entitled to be returned to their job at the conclusion of the leave.

Wages required to be paid under the EPSLA and EFMLEA are not subject to the employer's portion of social security payroll taxes. Income tax withholding applies.

Becomes effective no later than April 2 unless the DOL issues rules making the law go into effect earlier.

Interplay Between EPSL and PHEL

- **Eligible employees:** EPSL applies to all employees without regard to length of service, but PHEL only applies to employees who have been employed for at least 30 days.
- **Permitted purposes of leave:** EPSL is available for the employee's own COVID-19-related leave, as well as leave to care for others with covered COVID-19 issues and children who are out of school because of COVID-19 issues. PHEL is only available to care for children under age 18 who are out of school or otherwise without childcare because of COVID-19 issues.
- **Paid leave requirements:** During the first two weeks of leave, EPSL applies and requires full pay for employees who are absent due to their own coronavirus-related isolation, diagnosis, or medical care, but it requires only two-thirds pay for leave to care for family members or because of childcare needs. After 10 days of leave, EPSL would be exhausted, and then PHEL would kick in for absences because of childcare needs and provide two-thirds pay for the duration of the leave or until exhaustion of FMLA leave. Both forms of paid leave are subject to the dollar caps described above.
- **Job protection requirements:** PHEL has standard job protection under the FMLA, but EPSL does not, which means that someone who qualifies for EPSL but not PHEL does not have job protection.