



Labor & Employment: Coronavirus Update

IFA CORONAVIRUS
UPDATES



IFA[®]

INTERNATIONAL FRANCHISE ASSOCIATION

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Agenda

- Where We are as of **RIGHT NOW**
- OSHA / Safety & Health
- New FMLA, Sick Leave Rules
- Wage and Hour Issues
- What is Likely to Happen Next?



OSHA: Safety & Health Issues

Approach to Exposures

- **Employee discloses, or presents at work, with symptoms of COVID-19**
 - COVID-19 symptoms include fever, chills, cough, shortness of breath, and sore throat.
 - Tell employee that s/he is to remain home until 24-hours symptom free without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants).
 - Request, but do not require, that employee obtain a doctor's note and/or fitness for duty form returning the employee to work.
 - Do not alert or self-quarantine any other employees.
 - Do not clean and disinfect the job site.

Approach to Exposures (cont'd)

- **Employee tests positive for COVID-19**
 - Employees that test positive must be in self-quarantine.
 - Upon learning that an employee has tested positive, conduct an analysis to determine other employees that have had close/direct contact with the confirmed-positive employee within the last 14 days. Close contact is 6 feet for a prolonged period – walking past someone in the hallway is not a prolonged period.
 - Part of the analysis includes asking the confirmed-positive employee who s/he has had close/direct contact within the last 14 days.
 - Alert those employees that have had close/direct contact with the confirmed-positive employee within the last 14 days and direct those employees to self-quarantine for 14 days from the last close/direct contact with the confirmed-case.
 - Do not disclose the identity of the confirmed-positive individual to others.
 - Encourage those potentially exposed employees to seek medical care and a COVID-19 test, especially if exhibiting symptoms.
 - Clean and disinfect the office.
 - Not required, but recommended to contact local health department to receive guidance on any recommendations or requirements that the local department of health has for an employer that has received a confirmed-employee diagnosis.

Approach to Exposures (cont'd)

- **Employee has been in close/direct contact with a confirmed-COVID-19 individual**
 - This applies to any contact an employee might have had with any confirmed-positive case (i.e., coworker, family member, doctor, friend etc...)
 - Direct employee to self-quarantine for 14 days from the last close/direct contact with confirmed-case.
 - Encourage those employees to seek medical care and test, especially if exhibiting symptoms.
 - Unless this employee later tests positive, do not alert or self-quarantine any other employees. If this employee does test positive, follow steps previously detailed.
 - Unless this employee later tests positive, it is not necessary to clean and disinfect the work place beyond usual cleaning.

Cleaning/Disinfecting

- **Disinfecting Your Facility if Someone is Sick**

- Close off areas used by the sick person.
- Open outside doors and windows to increase air circulation in the area. Wait 24 hours (or as long as possible) before you clean or disinfect.
- Clean and disinfect all areas used by the sick person, such as offices, bathrooms, common areas, shared electronic equipment like tablets, touch screens, keyboards, remote controls, and ATM machines.

- **When cleaning**

- Wear disposable gloves and gowns for all tasks in the cleaning process, including handling trash.
- Additional personal protective equipment (PPE) might be required based on the cleaning/disinfectant products being used and whether there is a risk of splash.
- Gloves and gowns should be removed carefully to avoid contamination of the wearer and the surrounding area.
- Wash your hands often with soap and water for 20 seconds.
- Always wash immediately after removing gloves and after contact with an ill person.
- Hand sanitizer: If soap and water are not available and hands are not visibly dirty, an alcohol-based hand sanitizer that contains at least 60% alcohol may be used. However, if hands are visibly dirty, always wash hands with soap and water.

Cleaning/Disinfecting (cont'd)

- **For managers**

- Educate workers performing cleaning, laundry, and trash pick-up to recognize the symptoms of COVID-19.
- Provide instructions on what to do if they develop symptoms within 14 days after their last possible exposure to the virus.
- Develop policies for worker protection and provide training to all cleaning staff on site prior to providing cleaning tasks.
- Training should include when to use PPE, what PPE is necessary, how to properly don (put on), use, and doff (take off) PPE, and how to properly dispose of PPE.
- Ensure workers are trained on the hazards of the cleaning chemicals used in the workplace in accordance with OSHA's Hazard Communication standard (29 CFR 1910.1200).
- Comply with OSHA's standards on Bloodborne Pathogens (29 CFR 1910.1030), including proper disposal of regulated waste, and PPE (29 CFR 1910.132).

New Paid FMLA, Sick Leave Laws

Overview of Paid Leave Provisions

FFCRA

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graph TD; FFCRA[FFCRA] --> EPSL[Emergency Paid Sick Leave]; FFCRA --> EPFMLA[Emergency Paid FMLA];
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Emergency Paid Sick Leave

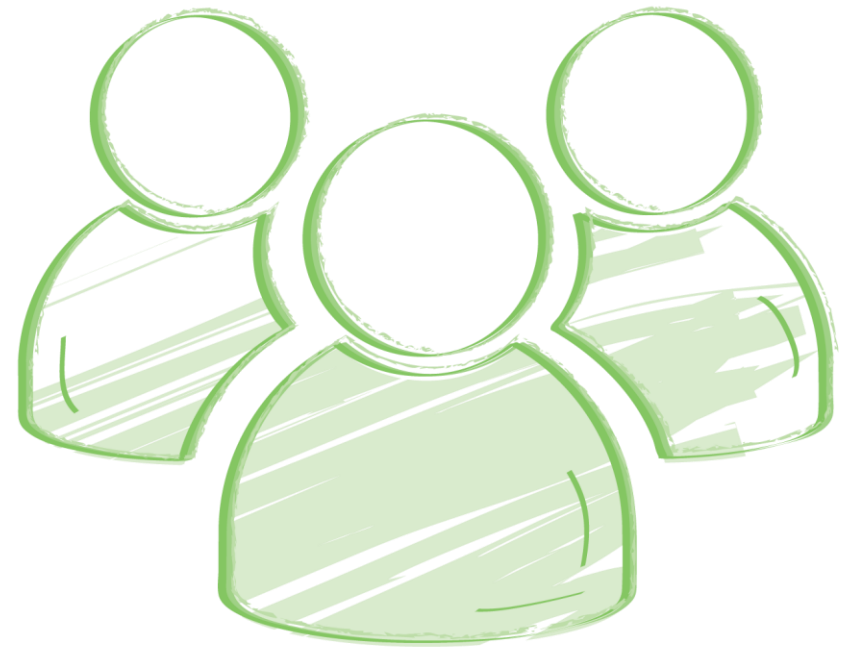
- Up to 80 hours
- 6 different reasons
- Full pay or 2/3 pay (depending on reason)—subject to caps

Emergency Paid FMLA

- Up to 12 weeks
- 1 reason only
- Weeks 1-2: unpaid
- Weeks 3-12: 2/3 pay—subject to caps

Who is Eligible to Take EPSL?

- **Who is an *Eligible Employee*?**
 - Eligible on DAY ONE of employment
- **How about:**
 - Part-time/full-time employees?
 - Temporary or seasonal employees?
 - Staffing companies?



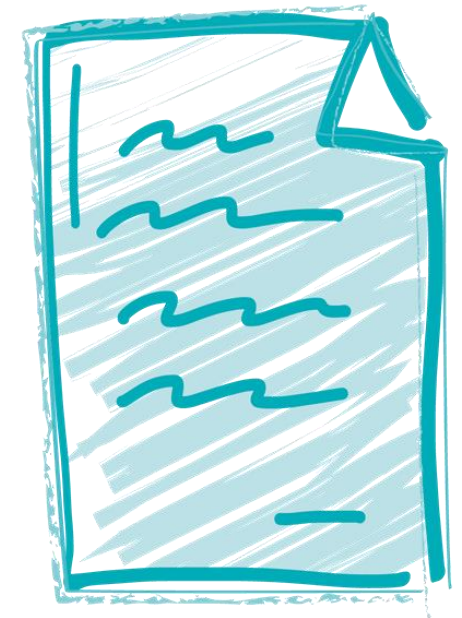
Who is Eligible to Take EPSL?



- (1) the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19
- (2) the employee has been advised by a health care provider to self-quarantine because of COVID-19
- (3) the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
- (4) the employee is caring for an individual subject or advised to quarantine or self-isolate
- (5) the employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions
- (6) the employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services

How in the World is this Documented?

- **New law does not address whether employers can request documentation, or what documentation employees should provide to support need for leave**
- **FMLA has never before covered school/child care closings**
- **State and local paid sick leave laws vary with respect to documentation rules**



How Much EPSL Leave is Provided, and How is it Paid?

- **How long**

- Full-time employees: 80 hours
- Part-time employees: the number of hours that the employee works, on average, over a 2-week period
- How do employers deal with a varying work week?

- **How much?**

- EPSL Reasons 1/2/3: 100% of regular rate, max of \$511 per day (\$5,110 in total)
- EPSL Reasons 4/5/6: Two-thirds of the employee's regular rate, max of \$200 per day (\$2,000 in total)



Sequencing Leave – Paid Sick Leave, Then Employer Policy

- **Employer must allow the employee to first use EPSL provided for under this new leave law**
- **The employer *cannot* require the employee to use accrued leave under an employer policy first**
- **What you already have probably doesn't count against new law's requirement—no matter how generous**



Emergency Family and Medical Leave Act (FMLA+)

*Could Be Weeks 1-12,
But Only Pays for Weeks 3-12*

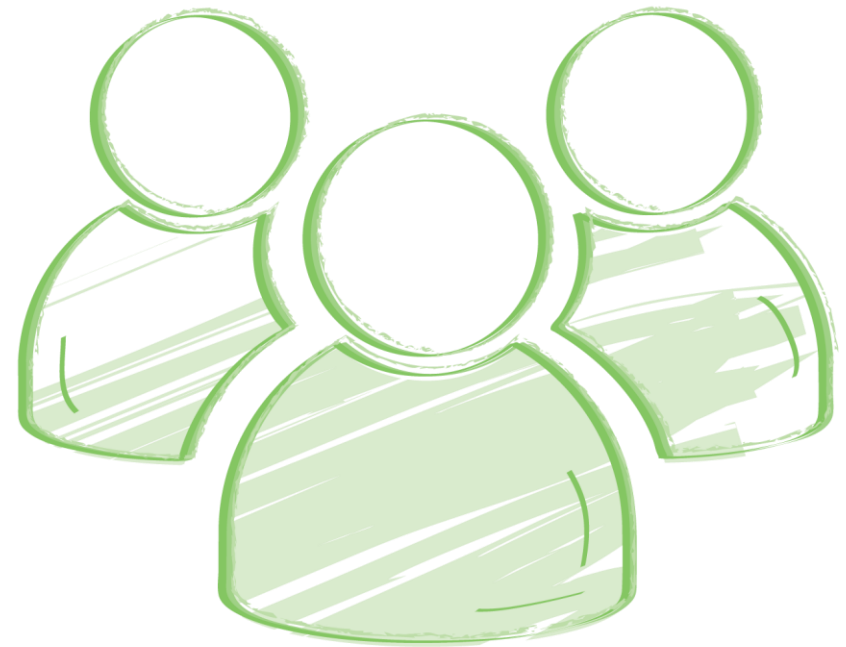
Who is Eligible to Take EFMLA?

- **Who is an *Eligible Employee*?**
 - On payroll 30 days
- **For:**
 - Limited to need to care for child when school or child care provider is closed



Who is Eligible to Take EFMLA?

- **First Ten Days unpaid**
- **Remaining Twelve Weeks paid at 2/3 regular rate, subject to cap**



Key Principle of FMLA+ to Keep Remembering

If H.R. 6201 does not expressly change a provision of the FMLA, it does not change the FMLA (for FMLA+)
(*i.e.*, classic FMLA rules apply, unless H.R. 6201 or DOL tells us otherwise)

Summary of Tax Credit Information from the Statute and Treasury

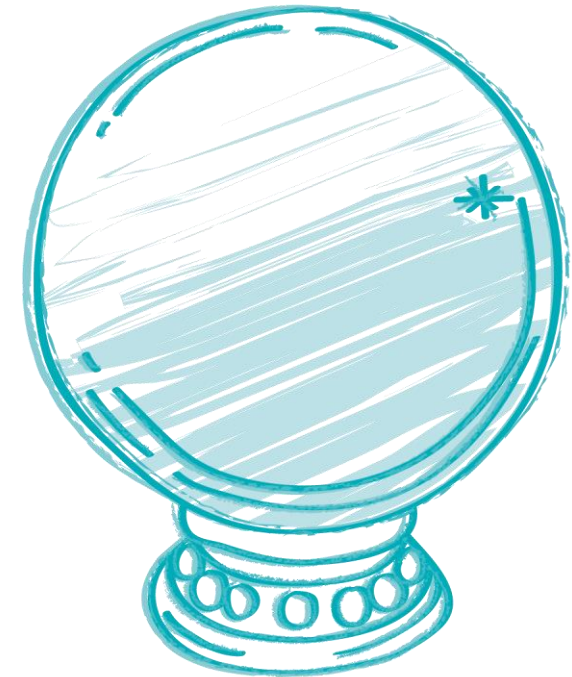
- **What's the promise from the government?**
 - Employers can take a refundable tax credit equal to 100 percent of qualified paid EPSL and FMLA+ leave
 - Practical implementation concerns
- **March 20 IRS/DOL announcement**
 - Employers will recoup these payments ***immediately*** by ***keeping a portion of the deposit*** they otherwise would pay as part of their employees' federal, social security and Medicare taxes
 - Can retain and will not be required to deposit these funds
- **Unclear whether some states also will offer tax relief for compliance – stay tuned**



Wage & Hour Concerns

Furloughs and Wage and Hour Issues

- **A *furlough* involves reducing the days or weeks that an employee may work.**
- **A *layoff* can be temporary or permanent.**
- **Employers may also consider reducing the daily hours of some employees.**
- **Think about unemployment benefits.**
- **Notice requirements.**
- **Exempt and Nonexempt status compliance.**



Other Wage & Hour Considerations

- **Can I reduce the pay of exempt employees while maintaining their workload to reflect current economic conditions?**
 - Don't adjust too often; may invalidate exempt status.
 - Reduced salary levels must not fall below the higher of the federal and applicable state minimum salary rates , which are *not* pro-rated for reduced work schedules.
 - For 2020, the minimum federal salary rate is \$684 per week. Higher minimum 2020 salary rates exist in Alaska, California, Colorado, Maine, and New York.
- **Can I mitigate some of these issues by converting exempt employees to non-exempt status?**
 - Yes.
 - Part-time at weekly pay levels not high enough to maintain exempt status.
 - All the compliance issues apply -- time keeping, reporting pay, minimum-wage compliance, overtime payments calculated on all wages (including bonuses and other incentive pay), and meal and rest breaks.
 - Consider maintaining non-exempt status when things return to normal.

Pay Reductions

Employers should provide written notice no later than the day before the change will be effective. These states require earlier advance notice:

State	Notice Requirement
Alaska	Notice by the payday before the change becomes effective
Maine	One working day's advance notice
Maryland	One pay period's advance notice
Missouri	30 days' advance written notice (the sole remedy for violations of this statute, however, is a penalty of \$50 per employee)
Nevada	Seven days' advance written notice is generally required, but is not required if the "employer complies with the requirements relating to the decrease that are imposed on the employer pursuant to the provisions of any collective bargaining agreement or any contract between the employer and the employee."
New York	Seven calendar days' advance written notice
North Carolina	Twenty-four hours' advance written notice
Pennsylvania	Notice by the payday before the change becomes effective
South Carolina	Seven calendar days' advance written notice
Virginia	One pay period's advance notice

Pay Reductions/Schedule Changes

- **New York, D.C and the City of Minneapolis require employers to obtain signed acknowledgements by employees of the notice of pay change.**
 - D.C., and New York require these notices to be provided in the employee's primary language.
- **Several jurisdictions have predictive scheduling requirements for certain industries that should be considered when schedule changes and furloughs are implemented including:**
 - California (Berkeley, Emeryville, and San Francisco only),
 - Chicago, Illinois (effective July 1, 2020),
 - New York City,
 - Oregon,
 - Philadelphia, Pennsylvania (effective April 1, 2020) (predictive pay requirements postponed), and
 - Seattle, Washington

THANK YOU!
Questions?