

# Determining Eligibility for Leave Under the Federal Families First Coronavirus Response Act (updated 3/25/20)

## EMERGENCY PAID SICK LEAVE (EPSL)

### Are we a covered employer?

Private employers with fewer than 500 at the time leave is taken. Public employers Quasi-government entities

### Can we obtain an exemption?

Private employers with fewer than 50 employees may qualify for an exemption BUT only from the requirement to provide leave for school closing or childcare unavailability. FFCRA regulations (to be released April 2020) expected to clarify.

Exempted employers may still be required to provide paid or unpaid leave under state sick and family leave laws.

### Is the employee eligible?

All employees of covered employers are eligible, unless a health care provider or emergency responder that the employer has elected to exclude. The employee must still be on the payroll to be eligible.

### Does the employee have existing paid sick leave available?

If yes, EPSL is required in addition to existing leave and employer may not require employee to exhaust existing sick leave before taking EPSL.

### Is employee able to work/telework?

If yes, leave is unavailable. Employee must be **unable** to work or **telework** for a reason related to coronavirus to be entitled to EPSL.

### Is leave available now?

Leave is required to be provided Leave provided before April 1 will not count towards the employee's entitlement.

### Has the employee given a qualifying reason for leave?

## EXPANDED FMLA (EFMLA)

### Are we a covered employer?

Private employers with fewer than 500 employees at the time leave is taken. Public employers Quasi-government entities

### Can we obtain an exemption?

Private employers with fewer than 50 employees may qualify for an exemption. FFCRA regulations (to be released April 2020) expected to clarify.

### Is the employee eligible?

Employees employed for at least 30 calendar days (as of March 2, 2020) are eligible, unless a health care provider or emergency responder that the employer has elected to exclude. Federal employees covered by Title II of FMLA are not eligible. No other FMLA eligibility requirements apply. The employee must still be on the payroll to be eligible.

### Has employee exhausted 12 weeks of FMLA leave?

Yes No

The original 12-week FMLA maximum is not extended. If an employee has already used part or all of FMLA leave for the leave year, no additional leave is required.

### Is employee able to work/telework?

If yes, EFMLA is unavailable. Employee must be **unable** to work or **telework** for a reason related to coronavirus to be entitled to EFMLA.

### Is leave available now?

Leave is required to be provided Leave provided before April 1 will not count towards the employee's entitlement.

### Has the employee given a qualifying reason for leave?

Employee's Own Condition		
Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.	Employee has been advised by a health care provider to self-quarantine related to COVID-19.	Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
Amount of Paid Leave		
Full-time employee is eligible for up to 80 hours of leave and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.		
Rate of Pay		
Either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over the two-week period).		

Care for Another	
Employee is caring for an individual who is subject to a quarantine or isolation order related to COVID-19	Employee is caring for an individual advised by their health care provider to self-quarantine related to COVID-19.
Amount of Paid Leave	
Full-time employee is eligible for up to 80 hours of leave and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.	
Rate of Pay	
2/3 the employee's regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over the two-week period).	

School Closure	
Employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.	
If the employee has exhausted their EPSL for a reason other than school closure, they are entitled to 12 weeks of EFMLA, the first two of which will be unpaid unless the employee has accrued PTO or state paid sick leave laws.	
Amount of Paid Leave	
Two weeks (up to 80 hours) of EPSL	Up to an additional 10 weeks of EFMLA leave.
Rate of Pay	
If taken together, employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over the 12-week period).	

For additional information about administering EPSL and EFMLA as well as use of state and other federal leave programs in conjunction with EPSL and EFMLA, stay tuned for more Barran Liebman compliance tools.