



## SMVT QUICKSHEET FAMILY FIRST CORONAVIRUS RESPONSE ACT ("FFCRA")

WHAT IS THE FAMILIES FIRST CORONAVIRUS RELIEF ACT?	The FFCRA is an emergency measure that takes effect April 1, 2020, providing Emergency Family Medical Leave and Paid Sick Leave to employees impacted by COVID-19. The law expires December 31, 2020.
WHO MUST COMPLY?	<ul style="list-style-type: none"> <li>• Employers with 1-499 employees must comply.</li> <li>• DOL will exempt "small businesses with fewer than 50 employees ... when the imposition of such requirements would jeopardize the viability of the business as a going concern."</li> <li>• The IRS website states, "The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern."</li> <li>• If you comply now, you will be reimbursed.</li> </ul>
<b>EMERGENCY FAMILY MEDICAL LEAVE ACT ("EFMLA")</b>	
WHAT DOES THE EMERGENCY FAMILY MEDICAL LEAVE ACT PROVIDE FOR EMPLOYEES?	<ul style="list-style-type: none"> <li>• Unlike traditional FMLA, EFMLA applies to all employers with fewer than 500 employees.</li> <li>• Unlike traditional FMLA, EFMLA applies to employees who have been employed 30 days or longer.</li> <li>• EFMLA provides 12 weeks of leave for employees who can neither work <i>nor telework</i> due to a need to care for a child whose school or childcare has been closed due to the public health emergency.</li> <li>• An employee's health insurance benefits, if there are any, must be maintained through the leave period.</li> </ul>
IS EFMLA PAID OR UNPAID?	<ul style="list-style-type: none"> <li>• The first two weeks of EFMLA are unpaid. An employee can choose to use existing vacation or PTO during those two weeks, but an employer cannot require it.</li> <li>• The remaining 10 weeks of Emergency Leave are paid by the employer, who will be reimbursed by the federal government.</li> </ul>

<b>HOW MUCH ARE EMPLOYEES PAID ON EFMLA?</b>	<ul style="list-style-type: none"> <li>• Salaried and hourly employees must be paid at least 2/3 of the employee’s regular rate, capped at \$200 per day and \$10,000 in aggregate per employee.</li> <li>• For employees with a varying schedule, a six-month look-back is used to calculate the payment due.</li> </ul>
<b>HOW AM I GOING TO PAY FOR THIS?</b>	<ul style="list-style-type: none"> <li>• The federal government will reimburse employers for what they pay to employees under this program. Those reimbursements can come through immediate tax credits or through application for refunds. The government has indicated refunds will be processed in about two weeks.</li> </ul>
<b>WHAT IF I HAVE FURLOUGHED MY EMPLOYEES?</b>	<ul style="list-style-type: none"> <li>• Furloughed employees are not eligible for these benefits.</li> </ul>
<b>DOES AN EMPLOYEE RETURNING FROM LEAVE HAVE A RIGHT TO HIS OR HER SAME JOB?</b>	<ul style="list-style-type: none"> <li>• Most employees out on EFMLA will be entitled to be restored to their same job when they return.</li> <li>• Employers with fewer than 25 employees, meeting certain requirements, may be exempt from that requirement.</li> </ul>
<b>WHAT DO I NEED TO DO NOW?</b>	<ul style="list-style-type: none"> <li>• EFMLA requires employers to provide employees with notice of benefits.</li> <li>• Notice should be posted in the workplace, but if employees are not physically present due to work-from-home directives, notice also should be provided by email or direct mail to employees. You can download the notice here: <a href="https://tinyurl.com/EPSLA-Poster">https://tinyurl.com/EPSLA-Poster</a>.</li> <li>• Draft an amendment to your personnel handbook to incorporate the FFCRA and note that amendment expires on December 31, 2020.</li> <li>• Develop a process for documentation of employees taking leave under EFLMA, including the reasons for the leave; the period of the leave; if applicable, documentation from employee of who directed the employee to quarantine or self-isolate; and the reasons the employee cannot telework.</li> </ul>

<b>EMERGENCY PAID SICK LEAVE ACT (“EPSLA”)</b>	
<p><b>WHO IS ENTITLED TO EMERGENCY PAID SICK LEAVE?</b></p>	<ul style="list-style-type: none"> <li>• EPSLA applies to all employers with 1-499 employees and covers all employees, regardless of how long they have been employed.</li> </ul>
<p><b>WHAT BENEFIT DOES EPSLA PROVIDE TO EMPLOYEES?</b></p>	<ul style="list-style-type: none"> <li>• EPSLA provides two weeks of paid sick leave for employees who cannot work <i>or telework</i> due to COVID-related illness or responsibilities.</li> <li>• For employees who work less than fulltime, or varied schedules, their Sick Leave Pay should be calculated on a prorated basis.</li> </ul>
<p><b>HOW MUCH DO I PAY EMPLOYEES ON SICK LEAVE?</b></p>	<ul style="list-style-type: none"> <li>• The amount an employee is paid depends on the reason for leave.</li> <li>• Employees unable to work <i>or telework</i> for these reasons must be paid at a regular rate with a cap of \$511/day with a total cap of \$5,110/employee:             <ul style="list-style-type: none"> <li>• Employee is subject to a COVID-19 quarantine/isolation order</li> <li>• Employee has been advised by a health care provider to self-quarantine related to COVID-19</li> <li>• Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis</li> </ul> </li> <li>• An employee unable to work <i>or telework</i> due to caring for an individual who is experiencing COVID-19 symptoms or who is subject to a Federal, State or local quarantine or isolation order related to COVID-19 must be paid at 2/3 regular rate with a cap of \$200/day with a total cap of \$2,000 per employee.</li> <li>• “Stay-at-Home” orders are not the same thing as quarantine or isolation orders and do not trigger obligations for leave payments.             <ul style="list-style-type: none"> <li>• An employee can choose to use existing vacation or PTO in order to avoid the cap on pay, but an employer cannot require it.</li> </ul> </li> </ul>

WHAT DO I NEED TO DO NOW?	<ul style="list-style-type: none"><li>• EPSLA requires employers to provide employees with notice of benefits.</li><li>• Notice should be posted in the workplace, but if employees are not physically present due to work-from-home directives, notice also should be provided by email or direct mail to employees. You can download the notice here: <a href="https://tinyurl.com/EPsLA-Poster">https://tinyurl.com/EPsLA-Poster</a>.</li><li>• Draft an amendment to your personnel handbook to incorporate the FFCRA and note that amendment expires on December 31, 2020.</li><li>• Develop a process for documentation of employees taking leave under EFLMA, including the reasons for the leave; the period of the leave; if applicable, documentation from employee of who directed the employee to quarantine or self-isolate; and the reasons the employee cannot telework.</li></ul>
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### TAX CREDITS

For individual guidance on applicability of tax relief, consult a tax professional.  
 The information below is drawn from the IRS bulletin.

<https://tinyurl.com/IRS-Corona-FAQ>

<b>WHAT OF MY OUT-OF-POCKET EXPENSES WILL BE REIMBURSED?</b>	<ul style="list-style-type: none"> <li>• Employers will receive 100% reimbursement for paid leave pursuant to the Act.</li> <li>• Health insurance payments paid for employees on Emergency Leave will be reimbursed.</li> </ul>
<b>HOW WILL I GET REIMBURSED?</b>	<ul style="list-style-type: none"> <li>• An immediate dollar-for-dollar tax offset against payroll taxes will be provided.</li> <li>• To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will be released.</li> <li>• The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.</li> <li>• Where a credits aren't enough, the Employer can request an accelerated reimbursement, and the IRS has said it will send the refund as quickly as possible, likely two weeks.</li> </ul>
<b>WHAT IF I DON'T HAVE THE CASHFLOW TO MAKE THE REQUIRED PAYMENTS?</b>	<ul style="list-style-type: none"> <li>• The DOL has provided leeway for employers who have insufficient cash flow to make payments to eligible employees. Such employers “should make payment of sick leave or family leave wages as soon as possible, but not later than seven 7 calendar days after the employer has withdrawn an amount equal to the required paid sick leave and expanded family and medical leave wages from the employer’s Federal payroll tax deposits or, to the extent such deposits are not sufficient, has received a refund of the credit amount from the IRS to cover the required wages.”</li> </ul>

## ADDITIONAL RESOURCES

Families First Coronavirus Relief Act statute

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

US DOL Fact Sheets

Families First Coronavirus Response Act: Employee Paid Leave Rights

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

Families First Coronavirus Response Act: Employer Paid Leave Requirements

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

US DOL FAQ

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

US DOL FIELD ASSISTANCE BULLETIN No. 2020-1

<https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1>

US DOL SAMPLE NOTICE TO NON-FEDERAL EMPLOYEES

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

US DOL NOTICE FAQ

<https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

IRS Guidance

<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>

Detailed summaries from The National Law Review

<https://www.natlawreview.com/article/families-first-coronavirus-response-act-what-should-employers-do>

<https://www.natlawreview.com/article/president-trump-signs-families-first-coronavirus-response-act-0>