



FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

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Engage PEO is recognized by SHRM to offer Professional Development Credits (PDCs) for SHRM-CP or SHRM-SCP.

The image features a white background with decorative orange circles in the corners. In the top-left corner, there is a large solid orange circle partially overlapping a smaller solid orange circle above it, and a thin orange outline circle that encompasses the large solid circle. In the bottom-right corner, there is a large solid orange circle partially overlapping a smaller solid orange circle above it, and a thin orange outline circle that encompasses the large solid circle.

Before we begin...

THIS SEMINAR IS NOT LEGAL ADVICE

Although the seminar may contain discussions of legal rights and responsibilities, the seminar itself does not constitute legal advice. This seminar is intended as an informational guide only; therefore, no statement should be considered as legal advice and no action should be taken by your organization in reliance on any statements.

The COVID-19 situation is changing daily and this presentation is based on current recommendations.



AGENDA

- Families First Coronavirus Response Act
- Emergency Paid Sick Leave Act (EPSLA, or simply PSL)
- Emergency Family Medical Leave Extension Act (EFMLA)
- Engage Processes and Tax Credits

OVERVIEW

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Who is Covered?

- **Employers:** All Employers with fewer than 500 employees
- **Employees:**
 - **Emergency Paid Sick Leave Act (EPSLA)** - Any Employee, regardless of how long they have worked for the Employer
 - **Emergency Family Medical Leave Extension Act (EFMLEA)** - Employees who have worked for the Employer for at least 30 days

EXCEPTIONS - HEALTH CARE WORKERS

- Defined as “anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity.”
- Includes any individual employed by an entity that contracts with any of the above institutions to provide services or to maintain the operation of the facility where that individual’s services support the operation of the facility.
- This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.

EXCEPTIONS - FIRST RESPONDERS

- Defined as “anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19.”

This includes, but is not limited to:

Military or national guard	Law enforcement officers
Correctional institution personnel	Fire fighters
Emergency medical services personnel	Physicians
Nurses	Public health personnel
Emergency medical technicians	Paramedics
Emergency management personnel	911 operators
Child welfare workers and service providers	Public works personnel
And persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency	

- Also includes individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

TELEWORK

- The FFCRA is intended encourage employers and employees to implement highly flexible telework arrangements.
- Telework is **no less work** than if it were performed at an Employer's worksite.
- An Employee is able to telework, and therefore may not take paid sick leave, if
 - (a) his or her employer has work for the employee to perform;
 - (b) the employer permits the employee to perform that work from the location where the employee is being quarantined or isolated; *and*
 - (c) there are no extenuating circumstances that prevent the employee from performing that work.

REASONS FOR LEAVE

Emergency FMLA – Only one reason:

The Employee is unable to work due to a need for leave to *care for their son or daughter* if the child's school or place of care is closed, or the child care provider of such son or daughter is unavailable, for reasons related to COVID-19.

Paid Sick Leave

1. The Employee is unable to work because they are subject to a Federal, State, or local COVID-19 quarantine or isolation order;
2. The Employee is unable to work because they have been advised by a health care provider to self-quarantine for a COVID-19 reason;
3. The Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The Employee is unable to work because they need to care for an individual who is either: (a) subject to a Federal, State, or local quarantine or isolation order; or (b) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. The Employee needs to care for their son or daughter if: (a) the child's school or place of care has closed; or (b) the child care provider is unavailable, due to COVID-19 related reasons.
6. The Employee is unable to work because the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

PAID SICK LEAVE REASON (1): ISOLATION ORDERS

- “But For” Standard: being covered under an isolation order must be the reason that the Employee could not otherwise perform work (including Telework) for the Employer.
- Includes Isolation Orders, Shelter-in-place Orders, Safe at Home Orders, or other similar orders from Federal, State, or Local governments.

PAID SICK LEAVE REASON (2): **ADVISED TO SELF-QUARANTINE**


Employee has been advised by a Health Care Provider to self-quarantine based on a belief that—

- The Employee has COVID-19;
- The Employee may have COVID-19; or
- The Employee is particularly vulnerable to COVID-19.



PAID SICK LEAVE REASON (3): SEEKING A MEDICAL DIAGNOSIS

- If the Employee is experiencing any of the following symptoms:
 - Fever;
 - Dry cough;
 - Shortness of breath; or
 - Any other COVID-19 symptoms identified by the CDC.
- Leave is limited to the time the Employee is unable to work because the Employee is **taking affirmative steps** to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a test for COVID-19.



PAID SICK LEAVE REASON (4): **CARING FOR AN INDIVIDUAL UNDER AN ISOLATION ORDER OR SELF-QUARANTINING**

- Includes an Employee's immediate family member, a person who regularly resides in the Employee's home (such as a roommate), or a similar person with whom the Employee has a relationship that creates an expectation that the Employee would care for the person if they were quarantined or self-quarantined.
- Does not include persons with whom the Employee has no personal relationship.

PAID SICK LEAVE REASON (5) *and* EMERGENCY FMLA:

CARING FOR A CHILD DUE TO SCHOOL/CHILDCARE CLOSURES

- This Reason is triggered only if no other suitable person is available to care for the child.
- “But For” standard: Must be no other way for Employee to perform work (including telework) because of the need to care for the child.
- Childcare does not have to be paid.
 - Example: if a relative or neighbor looks after the Employee’s child for free, but is now unavailable due to COVID-19.



PAID SICK LEAVE REASON (6): “SUBSTANTIALLY SIMILAR CONDITION”

DOL Provides *no further guidance here*, except that the “substantially similar condition(s)” may be defined by the Secretary of Health and Human Services at any point during the Effective Period, April 1, 2020, to December 31, 2020.

WHAT GETS PAID?

Paid Sick Leave	Emergency FMLA
Two weeks	Twelve weeks of leave total
If leave is taken for reasons (1) – (3): full pay Capped at \$511/day (\$5,110 total)	First two weeks unpaid
If leave is taken for reasons (4) – (6): 2/3 pay Capped at \$200/day (\$2,000 total)	Following ten weeks paid at 2/3 pay Capped at \$200/day (\$10,000)

FFCRA includes specific instructions for calculating pay for Employees who work irregular or part time shifts.

EXAMPLE

If leave is taken for Paid Sick Leave Reasons (1)-(3):



Two weeks at full pay

If leave is taken for Paid Sick Leave Reasons (4) or (6):



Two weeks at 2/3 pay

If leave is taken for Paid Sick Leave Reason (5), which is the same as the one Emergency FMLA Reason:



PSL

EFMLA

Up to twelve total weeks at 2/3 pay

SPECIAL NOTE ABOUT PAID SICK LEAVE REASON (5)/EMERGENCY FMLA

- Prior FMLA leave counts towards EFMLA entitlement, but **not** towards PSL entitlement.
- Prior use of PSL counts towards PSL entitlement when taken for this reason (i.e. concurrently with EFMLA), but **does not count** towards EFMLA entitlement.
 - For example, if one week of PSL is taken for another reason, then later Employee requests leave for PSL Reason (5)/EFMLA, only one of the first two weeks will be paid under PSL, and the remaining ten weeks will be paid under EFMLA.

SUBSTITUTING ACCRUED PTO/VACATION FOR PAID SICK LEAVE/EMERGENCY FMLA

- PTO/Vacation accrued per company policy may not be substituted or used in lieu of PSL – thus, PSL may be taken on top of other forms of paid leave accrued per Company policy.
 - Employers **may not** require that Company-provided PTO/Vacation/Sick time be exhausted before PSL can be taken. PSL can be taken first, then Employee may use accrued PTO/Vacation/Sick time.
- PTO/Vacation can be used to substitute unpaid portions of leave under EFMLA (for example, if the first two weeks of EFMLA are unpaid because PSL was previously taken for another reason and has been exhausted)
 - Employers **may** require that Employees exhaust Company-provided PTO/Vacation/Sick time concurrently with unpaid portions of EFMLA.



SUPPLEMENTING PAID SICK LEAVE/EMERGENCY FMLA WITH **ACCRUED PTO/VACATION**

- Employers may supplement unpaid portions of PSL/EFMLA with PTO/Vacation/Sick time accrued per company policy.
- Example: if Employee is taking leave under PSL Reason (4), PSL Reason (5)/EFMLA, or PSL Reason (6), and is only being paid at 2/3 their regular rate, accrued PTO/Vacation/Sick time may be used to supplement the remaining 1/3 of their full pay.

INTERMITTENT LEAVE

- For Employees who **cannot** Telework (i.e. must report to the workplace)
 - Intermittent leave can only be taken for PSL Reason (5)/EFMLA
 - Intermittent leave cannot be taken for any other PSL Reason, and once the Employee begins taking PSL for one or more of such reasons, the Employee must use the leave consecutively until the Employee no longer has a qualifying reason to take leave.
- For Employees who **can** Telework
 - Intermittent leave can be taken for any Reason (PSL or EFMLA)
- Employer and Employee must both agree to intermittent leave.

EMPLOYER NOTICE – POSTING REQUIREMENTS

- Covered Employers are required to post and keep posted on its premises, in conspicuous places, the notice released by the DOL.
- If Employees are teleworking due to COVID, Employers can email the notice directly to such Employees.
- Does not need to be translated.

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;
- ⅔ for qualifying reasons #4 and 8 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 ⅓ 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:

- | | |
|---|---|
| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; | 5. 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. has been advised by a health care provider to self-quarantine related to COVID-19; | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
| 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); | |

▶ 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
dol.gov/agencies/whd



WH1422 REV 0320

EMPLOYEE NOTICE

- The Employer may require “**reasonable notice procedures**” after the first workday (or portion thereof) for which an Employee takes leave for PSL Reasons (1) – (4) or Reason (6).
 - Notice may not be required in advance, but only after the first workday (or portion thereof), for which leave is taken.
 - However, providing notice as soon as practicable is encouraged.
- For leave taken for PSL Reason (5)/EFMLA, if the leave is foreseeable, notice should be given as soon as practicable.
- If an Employee fails to give proper notice, the Employer must give a second chance to provide the required documentation prior to denying the request for leave.

DOCUMENTATION

- Employee is **required to provide documentation** containing basic information on the leave: Engage has created compliant forms.
- In addition, depending on the Reason for leave, Employees may be required to provide any of the following documentation:
 - The name of the government entity that issued the Quarantine or Isolation Order;
 - The name of the health care provider who advised the Employee to self-quarantine;
 - The name of the Son or Daughter being cared for;
 - The name of the School, Place of Care, or Child Care Provider;
 - A representation that no other suitable person will be caring for the Son or Daughter during the period of leave.

CONTINUATION OF HEALTH CARE BENEFITS

- Employers are required to continue provision of Employer's portion of health care benefits during PSL or EFMLA.
- Employee remains responsible for paying their portion of group health plan premiums.
- If coverage lapses while on leave (either due to Employee's choice not to continue coverage, or failure to pay their portion of the premium), the Employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any additional qualifying period.
- If the Employee fails to return from leave, or if the entitlement to leave ceases because an Employer closes its business, Employer's obligation to maintain health benefits also ceases.

RETURN TO WORK - JOB PROTECTION

- Employee must be restored to same or similar position after returning from PSL or EFMLA.
- Exceptions:
 - Employment actions, such as layoffs, that would have impacted the Employee regardless of whether they took leave;
 - “Key Employees” (only applies to EFMLA);
 - Employers with fewer than 25 Employees if all of the following criteria are met:
 - (i) Leave was taken for PSL Reason (5)/EFMLA;
 - (ii) The position held by the Employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions;
 - (iii) The Employer makes reasonable efforts to restore the Employee to an equivalent position; and
 - (iv) The Employer makes reasonable efforts to contact the Employee during a one-year period, if an equivalent position becomes available.

NO RETALIATION!

Employers **may not retaliate** against an Employee for taking leave, asking to take leave, or filing a complaint related to PSL or EFMLA.

SMALL BUSINESS EXCEPTION

- A small business (an employer with fewer than 50 employees) may be exempt from the requirement to provide leave when:
 - (1) Such leave would cause the Employer's expenses and financial obligations to exceed available business revenue and cause the small employer to cease operating at a minimal capacity;
 - (2) The absence of the employee or employees requesting such leave would pose a substantial risk to the financial health or operational capacity of the Employer because of their specialized skills, knowledge of the business, or responsibilities; or
 - (3) The Employer cannot find enough other workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services the Employee or Employees requesting leave provide, and these labor or services are needed for the Employer to operate at a minimal capacity.
- If an Employer decides to deny PSL or EFMLA, the Employer must document the facts and circumstances that meet the criteria to justify the denial.
- The Employer should not send any materials or documentation to the DOL, but rather should retain such records for its own files.

RECORDKEEPING

- Employers are required to keep and maintain all documentation related to the FFCRA for at least **four (4) years**.
- Such documentation includes, but is not limited to:
 - Employee leave requests;
 - Approvals;
 - Denials;
 - Reasoning for small business exception;
 - Documentation related to claims for tax credits

TAX CREDITS

The FFCRA entitles employers to receive a credit for the full amount of:

- Qualified PSL wages
- Qualified EFMLA wages
- Allocable health plan expenses
- Employer's share of Medicare tax

For PSL and EFMLA taken between April 1, 2020 and December 31, 2020.

TAX CREDITS

Client/Employer receives a full tax credit on the IRS Form 941 (filed by Engage) for all wages paid for PSL and EFMLA pay at a dollar for dollar match, up to limits and:

- PSL and EFMLA wages **are not** subject to Social Security Tax for the employer.
- PSL and EFMLA wages **are** subject to Social Security tax for the employee.
- PSL and EFMLA wages **are** subject to Medicare tax for both the employer and employee.
- The client/employer receives a refund of employer side of Medicare tax.

TAX CREDITS

Employers that are the clients of IRS certified PEOs (CPEOs), like Engage, are entitled to the FFCRA tax credits, not the CPEO.



ENGAGE'S PROCESS FOR REQUESTING PAID SICK LEAVE OR EMERGENCY FMLA

When a client has an Employee who is requesting PSL or EFMLA, Engage clients must:

- Download the Request Forms from Engage's COVID Forms Library: www.engagepeo.com/forms-library.
- For PSL – provide completed form to your payroll rep.
- For EFMLA – provide completed form to FMLA@EngagePEO.com.

Forms should be completed prior to running the payroll cycle for which paid leave under FFCRA is provided.

ENGAGE'S PROCESS FOR TAX CREDITS

Clients seeking the FFCRA tax credits for PSL and EFMLA must:

- submit PSL and/or EFMLA forms for employees taking such leave to Engage
- submit the PSL and/or EFMLA tax credit forms to Engage
- fund the PSL and/or EFMLA pay for the applicable payroll period

Engage shall:

- pay the employees the PSL and/or EFMLA pay
- credit the applicable federal employment taxes an amount equal to the PSL and/or EFMLA pay the client reports and funds

If Client's PSL and/or EFMLA tax credit exceeds the amount of federal tax owed for that pay period, Client must also file an IRS Form 7200 to seek an advance payment of the excess from the IRS/US Treasury.

Client must provide Engage with a copy of IRS Form 7200 to reconcile IRS Form 941

STATE LAWS

- **States with Paid Sick Leave Laws include:**
 - Arizona, California, Connecticut, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, Washington, D.C.
- **States with their own FMLA Laws include:**
 - California, Connecticut, Hawaii, Maine, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, Washington D.C., Wisconsin



**VISIT OUR COVID-19
INFORMATION PAGE
FOR CLIENTS:**

www.engagepeo.com/covid-19-information-clients



Contact Us

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