

EFMLEA & EPSLA Triggers:

The two situations for employers to be aware of include the *Emergency Family and Medical Leave Expansion Act (EFMLEA)* and the *Emergency Paid Sick Leave Act (EPSLA)*. If an employee is taking time off due to the following, employers will need to take steps to comply.

EFMLEA:

1. To adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus;
2. To care for a family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus; and
3. To care for a child of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to the coronavirus

EPSLA:

1. the employee is subject to government ordered quarantine;
2. the employee has been advised by a health care provider to self-quarantine;
3. the employee is experiencing symptoms of COVID-19;
4. the employee is caring for someone who meets any of the criteria in (1) through (3) (Note that this is not limited to caring for a family member); or
5. the employee is caring for their child because of school being closed for a pandemic.

HR 6201, the Families First Coronavirus Response Act

Emergency Family and Medical Leave Expansion Act

- Leave would cover employees who are unable to work (or telework) because the employee is caring for their child (18 years or younger) because the school is closed or childcare provider is unavailable due to a public health emergency.
- Leave shall take effect 15 days after enactment of the act and sunset on December 31, 2020.
- Eligible employee is defined as an employee who has been employed for at least 30 calendar days by the employer.
- Employers with 500 or fewer employees would be required to provide the paid leave.
- Employers are not required to pay initial ten days of leave; however, employees may substitute accrued vacation, personal or sick leave to cover unpaid leave portion.
- Employers must pay ten remaining weeks of leave at a rate not less than two-thirds of employee's regular rate, not to exceed \$200 per day and \$10,000 in the aggregate.
- In the case of an employee whose schedule varies from week to week to such an extent an employer is unable to determine with certainty the number of hours the employee would have worked if such an employee had not taken the leave, the employer shall use the following in place of that number:
 - 1) A number equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date which the employee takes the leave, including hours for which the employee took leave of any type.
 - 2) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.
- Employers that are health care providers or emergency responders may elect to exclude employees from this leave.
- Employers with 25 or fewer employees are not required to restore an employee once leave has been exhausted if the position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer caused by a public health emergency.
- Secretary of Labor has authority to issue regulations to:

- 1) Exclude certain health care providers and emergency responders from the definition of eligible employee; and
- 2) Exempt small businesses with fewer than 50 employees if the above requirements would jeopardize the viability of the business going forward.

Emergency Paid Sick Leave Act

- Employers are required to provide 80 hours of fully paid sick leave to full-time employees (pro-rata rules would apply to part-time employees) on top of any other existing paid leave program of the employer.
- Leave provided under this provision shall take effect 15 days after enactment of this act and made available to covered employees immediately. The leave will sunset on December 31, 2020.
- Private employers with 500 or fewer employees must provide paid sick leave while a public agency or any other entity that is not a private entity or individual and employs 1 or more employees.
 - 1) Private Employers and Public Agency are defined as those engaging in commerce.
- Covered employees eligible for paid sick leave include:
 - 1) Employee subject to a Federal, State, or local quarantine or isolation order related to coronavirus;
 - 2) Employee has been advised by health care provider to self-quarantine due to coronavirus;
 - 3) Employee is experiencing symptoms of coronavirus;
 - 4) Employee is caring for an individual who is subject to an order described in (1) or has been advised as described in (2);
 - 5) Employee is care for their child because the school is closed or childcare provider is unavailable due to coronavirus; or
 - 6) Employee is experiencing a similar condition specified by Secretary of HHS.
- Employers would be required to pay employees their full wages, not to exceed \$511 per day and \$5,110 in the aggregate, for a use described in (1), (2), or (3) above.
- Employers would be required to pay employees two-thirds of their wages, not to exceed \$200 per day and \$2,000 in the aggregate, for a use described in (4), (5), or (6) above.
- Employers are prohibited from retaliating against any employee who takes leave in accordance with the act. Employers that fail to pay required sick leave will be treated as a failure to pay minimum wages in violation of the Fair Labor Standards Act.
- In the case of an employee whose schedule varies from week to week to such an extent an employer is unable to determine with certainty the number of hours the employee

would have worked if such an employee had not taken the leave, the employer shall use the following in place of that number:

- 1) A number equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date which the employee takes the leave, including hours for which the employee took leave of any type.
 - 2) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.
- Secretary of Labor has authority to issue regulations to:
 - 1) Exclude certain health care providers and emergency responders from the definition of eligible employee; and
 - 2) Exempt small businesses with fewer than 50 employees if the above requirements would jeopardize the viability of the business going forward.

Tax Credits for Paid Sick and Paid Family and Medical Leave

- Private employers with 500 or fewer employees required to provide COVID-19 related paid leave are eligible for a 100 percent refundable payroll tax credit on the wages paid for leave.
- The tax credits would be administered by the IRS and be creditable against employer-side payroll tax liability, with any excess refunded to the employer.
- Tax credits for COVID-19 related pay sunset on December 31, 2020.

Emergency Unemployment Insurance Stabilization and Access Act

- Expands unemployment benefits and provides \$1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance (UI) benefits related to COVID-19.
- \$500 million would be transferred to the states within 30 days after the enactment of the bill upon certification by the Secretary of Labor to the Secretary of the Treasury (so long as the state complies with certain requirements, such as requiring employers to notify employees of the availability of unemployment compensation and permitting individuals to apply for unemployment compensation in at least two of the following ways—in-person, by phone, or online).
- The remaining \$500 million of the grant would be reserved for states in which the number of unemployment compensation claims has increased by at least 10% over the previous calendar year. To receive access to the second portion of the grant, states must, among other things, make it easier for individuals to obtain unemployment compensation by taking steps to temporarily ease eligibility requirements that are limiting access to UI

during the COVID-19 outbreak, like work search requirements, required waiting periods, and requirements to increase employer UI taxes if they have high layoff rates.

Health Care (Applicable to Private Health Plans)

- Establishes requirements for private healthcare plans to provide COVID-19 diagnostic testing and related visits at no cost to consumers. This includes coverage for the cost of a provider, urgent care center or emergency room visit in order to receive testing.