Navigating the Coronavirus - an Employer’s Playbook for the new COVID-19 laws

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- The COVID-19 situation is rapidly changing, sometimes by the hour, so information contained herein may be already outdated.

- You should consult with your own attorney and/or tax advisors or other professional service providers in your own jurisdiction for more information.
Overview

- Shelter In Place Orders
- Families First Coronavirus Response Act (Federal)
  - Emergency Paid Sick Leave Act
  - Extended Family Medical Leave Expansion Act
- Workplace
  - In the office
  - Remote Workforce
- Stimulus/Layoffs
Shelter In Place

- CA Statewide - Governor Newsom’s Executive Order
- CA Bay Area Counties Order
  - Essential Businesses
  - Essential Infrastructure
  - Minimum Basic Operations
- Other Jurisdictions (see handout chart listing jurisdictions)
  - States - Alaska
  - Local Cities
CA Stay at Home Orders Exec Order N-33-20

- Issued March 19, 2020 - effective immediately
- Stay at home
  - Enforceable by law: ($1000 fine, 6 mo. Prison)
  - Exceptions:
    - Critical Infrastructure https://www.cisa.gov/critical-infrastructure-sectors

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Local Shelter In Place

- Purpose: to self-isolate while enabling essential services to continue
- Ordered to shelter in place at place of residence
- Maintain social distancing of 6 ft
- Leave homes only for essential activities, gov’t functions or operate essential businesses
- All businesses required to cease all operations except Minimum Basic Operations - except permit telework

Local Shelter In Place

“Essential Activities”

- To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.

- ii) To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.

- iii) To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, or running.

- iv) To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.

- v) To care for a family member or pet in another household.
Local Shelter In Place

- **Essential Infrastructure**
  - public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services)
  - all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt
Local Shelter In Place

“Essential Businesses”

i) Healthcare Operations and Essential Infrastructure;

ii) Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;

iii) Food cultivation, including farming, livestock, and fishing;

iv) Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;

v) Newspapers, television, radio, and other media services;

vi) Gas stations and auto-supply, auto-repair, and related facilities;

vii) Banks and related financial institutions;
“Essential Businesses” (cont’d)

- viii) Hardware stores;
- ix) Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
- x) Businesses providing mailing and shipping services, including post office boxes;
- xi) Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
- xii) Laundromats, drycleaners, and laundry service providers; xiii) Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site; xiv) Businesses that supply products needed for people to work from home;
- xv) Businesses that supply other Essential Businesses with the support or supplies necessary to operate; xvi) Businesses that ship or deliver groceries, food, goods or services directly to residences;
- xvii) Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order; xviii) Home-based care for seniors, adults, or children; xix) Residential facilities and shelters for seniors, adults, and children;
- xx) Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
- xxi) Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions: (1) Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day). (2) Children shall not change from one group to another. (3) If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other. (4) Childcare providers shall remain solely with one group of children.
Other States Shelter in Place Orders Local

- See, Chart comparing pacific states and local ordinances (CA, (Contra Costa (Bay Area), Santa Clara, Sacramento, Monterey, Fresno, Sonoma, Napa), Alaska, Idaho, Montana, Oregon, Washington,
  - Essential Activities
  - Essential Services
  - Essential Infrastructure
  - Minimum Basic Operations
Families First Coronavirus Response Act (FFCRA)

Employee Paid Leave Rights

- Emergency Paid Sick Leave Act (EPSLA)

- Extended Family Medical Leave Expansion Act (EFMLEA)
FFCRA

- Effective April 1, 2020 - December 31, 2020
- Covered Employers: Employers with 1-499 employees (under 500 employees)
  - # of employees at the time the leave is to be taken
  - FTE & PT
  - temporary employees
  - employees who are jointly employed
  - Independent contractors are not counted
  - Count when employee leave initiated
Summary

Employees of covered employers are eligible for:

- 2 weeks (up to 80 hrs) paid sick leave at the employee’s regular rate of pay where employee is unable to work because employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or

- 2 weeks (up to 80 hrs) paid sick leave at 2/3 the regular rate of pay because employee is unable to work because of a bona fide need to care for individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and

- Up to an additional 10 weeks paid expanded family and medical leave at 2/3 employee’s regular rate of pay where employee, (employed for 30 days), is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Source: https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave
Small Business Exception

Applies to:

- Small businesses with fewer than 50 employees AND
- Employee’s leave is to care for his or her child whose school or place of care is closed, or child care provider is unavailable,

Only if:

- When such leave would jeopardize the viability of the business as a going concern.
Small Business Exception

- No application process - exemption applies if employer determines
  - Leave would result in expenses and financial obligations exceeding available revenues and cause the business to cease operating at a minimal capacity
  - Employee’s absence would entail a substantial risk to the financial health or capabilities of the business because of the employee’s specialized skills, knowledge, business, or responsibilities; or
  - Insufficient employees able, willing and qualified at the time and place needed for labor or services provided by the employee, and these labor or services are needed for the business to operate at a minimal capacity
Eligible Employees

**EPSLA**
- All employees of covered employers are eligible for 2 week paid sick time
- Day 1 (no waiting time – unlike 30 days for EFMLEA)

**EFMELA**
- Eligible only after 30 days of working

Employer may exclude employees who are either Health Care Providers or Emergency Responders
Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements.

- Website
- Online
- Direct Mail
- Direct Emailed

Qualifying Reasons for Leave - under FFCRA

An employee qualifies for **paid sick time** if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1. is subject to a Federal, State, or local **quarantine** or isolation order related to COVID-19;
2. has been advised by a health care provider to **self-quarantine** related to COVID-19;
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);
5. 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; or
6. is experiencing any other **substantially-similar condition** specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

An employee qualifies for **expanded family leave** if the 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.
Summary

How much leave?

- For reasons 1-4 & 6:
  - FTE is eligible for **80 hours** of paid sick leave
  - PT = eligible for paid sick leave, **number of hours employee works on average** over 2 week period

- Reason 5 (childcare/school):
  - FTE = 12 weeks of leave (2 weeks paid sick, **10 weeks paid EFML**)
  - PT = ## of hours normally scheduled to work.
Summary

Calculation of Pay

- **100% - For leave reasons (1), (2), or (3):** employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher. Capped at $511/day and $5,110 total (over a 2-week period).

- **2/3 - For leave reasons (4) or (6):** employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher. Capped at $200/day and $2,000 total (over a 2-week period).

- **2/3 - For leave reason (5):** employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher. Capped at $200/day and $12,000 total (over a 12-week period).
EPSLA Calculation of Pay
Required Rate of Pay

- The applicable rate of pay is the highest applicable wage rate of pay of either:
  - Employee’s regular rate of pay
  - FLSA min wage or
  - Highest applicable state of local min wage
EPSLA

Health Insurance

During leave, continuation of health insurance
EFMLEA
Qualifying Reason for Leave

There is only ONE qualifying reason for leave under the EFMLEA

- Employee leave to care for his or her child whose school or childcare provider is closed or unavailable for reasons related to COVID-19
EFMLEA

- **Initial 2 weeks is unpaid**
  - Employee may choose to use paid sick leave for the first 2 weeks under EPSLA or any accrued unused time off under their employer benefits package, running concurrently as the unpaid EFMLA

- **Remaining 10 weeks is PAID leave**
  - Hours of leave are paid at 2/3 the employees regular rate of pay
  - Employer does not have to pay more than $200/day or $10,000 total
EFMLEA
Interaction with FMLA

- This is a new leave reason under the FMLA, it does not add more weeks
  - Example: An employee who has already used 12 weeks of leave under the FMLA is not able to use the EFMLA leave
Employee Notice of Need for Leave - 826.90

(a) Requirement to provide notice.

May require an Employee to follow reasonable notice procedures

• After the first workday (or portion thereof)
• Employee can provide notice sooner
• Notice as soon as practicable (encouraged not required - except for Childcare/School leave, then required)
• Failure to give notice - Employer notifies of failure and opportunity to provide documentation before denying leave
Employee Notice of Need for Leave - 826.90

(c) Content of notice.

- Oral notice
- Sufficient information for an Employer to determine whether the requested leave is covered by the EPSLA or the EFMLEA.
- An Employer may not require the notice to include documentation beyond what is allowed by § 826.100.

(d) Complying with Employer policy.

- Generally, it will be reasonable for the Employer to require the Employee to comply with the Employer’s usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.
Employee’s Documentation of Need for Leave. § 826.100

Employee must provide following information prior to taking PSL or EFML

(1) Employee’s name;
(2) Date(s) for which leave is requested;
(3) Qualifying reason for the leave; and
(4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

(b) To take Paid Sick Leave for a qualifying COVID-19 related reason under § 826.20(a)(1)(i), an Employee must additionally provide the Employer with the name of the government entity that issued the Quarantine or Isolation Order.

(c) To take Paid Sick Leave for a qualifying COVID-19 related reason under § 826.20(a)(1)(ii) an Employee must additionally provide the Employer with the name of the health care provider who advised the Employee to self-quarantine due to concerns related to COVID-19.
Employee’s Documentation of Need for Leave. § 826.100

(d) To take Paid Sick Leave for a qualifying COVID-19 related reason under § 826.20(a)(1)(iii) an Employee must additionally provide the Employer with either:

(1) the name of the government entity that issued the Quarantine or Isolation Order to which the individual being care for is subject; or

(2) The name of the health care provider who advised the individual being cared for to self quarantine due to concerns related to COVID-19.

(e) To take Paid Sick Leave for a qualifying COVID-19 related reason under § 826.20(a)(1)(v) or Expanded Family and Medical Leave, an Employee must additionally provide:

(1) the name of the Son or Daughter being cared for;

(2) the name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and

(3) a representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave.
(f) The Employer may also request an Employee to provide such additional material as needed for the Employer to support a request for tax credits pursuant to the FFCRA. The Employer is not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

Return to work § 826.130

General rule. On return from Paid Sick Leave or Expanded Family and Medical Leave, an Employee has a right to be restored to the same or an equivalent position (in accordance with 29 CFR 825.214 and 215).

Restoration limitations.

(1) An Employee is not protected from employment actions, such as layoffs, that would have affected the Employee regardless of whether he or she took leave. In order to deny restoration to employment, an Employer must be able to show that an Employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.

(2) For leave taken under the EFMLEA, an Employer may deny job restoration to key Eligible Employees, as defined under the FMLA (29 CFR 825.217), if such denial is necessary to prevent substantial and grievous economic injury to the operations of the Employer.
(3) An Employer who employs fewer than 25 Eligible Employees may deny job restoration if all four of the following conditions exist:

(i) Leave was to care for child whose School or Place of Care was closed, or whose Child Care Provider was unavailable, for COVID-19 related reasons;

(ii) The position no longer exists due to economic conditions or other changes in operating conditions and are caused by a Public Health Emergency during the period of leave;

(iii) The Employer makes reasonable efforts to restore to an equivalent position (with equivalent employment benefits, pay, and other terms and conditions of employment); and

(iv) Employer makes reasonable efforts to contact the Eligible Employee during a one-year period, if an equivalent position becomes available.
Tax Credits:

Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury’s website.
No Discrimination or Retaliation

PROHIBITIONS: EMPLOYERS MAY NOT DISCHARGE, DISCIPLINE, OR OTHERWISE DISCRIMINATE AGAINST ANY EMPLOYEE WHO TAKES PAID SICK LEAVE UNDER THE FFCRA AND FILES A COMPLAINT OR INSTITUTES A PROCEEDING UNDER OR RELATED TO THE FFCRA.
Penalties and Enforcement

**Paid Sick Time.** Employers in violation of the first two weeks’ paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217.

**EFMLEA Grace Period April 17, 2020.** Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act.

- Temporary non-enforcement for 30 days. To enable public and private employers who are covered by the Act to come into compliance with the new statute, Wage & Hour Division (WHD) will observe a temporary period of non-enforcement of the FFCRA for the period of March 18 through April 17, 2020.
  - Must show acted reasonably and in good faith. Must make employee whole as soon as practicable.
§ 826.140 Recordkeeping.

An Employer is required to retain all documentation provided pursuant to § 826.100 for 4 years, regardless whether leave was granted or denied.

If an Employee gave oral statements when requesting PSL or EFML, Employer must document and maintain such information in its records for 4 years.

If deny request pursuant to § 826.40(b) (exemption) must document the determination by its authorized officer that it is eligible for such exemption and retain for 4 years.
§ 826.140 Recordkeeping.

To claim IRS tax credits, keep following records for 4 years:

(1) Documentation to show how the Employer determined the amount of paid sick leave and expanded family and medical leave paid to Employees that are eligible for the credit, including records of work, Telework and Paid Sick Leave and Expanded Family and Medical Leave;

(2) Documentation to show how the Employer determined the amount of qualified health plan expenses that the Employer allocated to wages;

(3) Copies of any completed IRS Forms 7200 that the Employer submitted to the IRS;

(4) Copies of the completed IRS Forms 941 that the Employer submitted to the IRS or, for Employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the Employer’s entitlement to the credit claimed on IRS Form 941, and

(5) Other documents needed to support its request for tax credits pursuant to IRS applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit. For more information, please consult https://www.irs.gov/newsroom/covid-19-related-taxcredits-for-required-paid-leave提供的小和中型企业的FAQs.
EPSLA Reason 1

Where an employee is unable to work because he or she is subject to a Federal, State, or local COVID-19 quarantine or isolation order.

- Quarantine or Isolation Order - broad range of gov’t orders
- “but for” being required to comply with a quarantine or isolation order
EPSLA Reason 1 - Quarantine or Isolation Order

No paid sick if the employer does not have work for the employee

**Example:** If a coffee shop closes temporarily or indefinitely due to Covid downturn, it would no longer have any work for its employees. A cashier subject to a stay-at-home order would not be able to work even if he were not required to stay at home because the coffee shop would be closed.

- No paid sick because workplace is closed
- Worker eligible for unemployment
- Not paid even if the closure of the coffee shop was substantially caused by a stay-at-home order.
EPSLA Reason 1 - Quarantine or Isolation Order

No paid sick if able to telework and:

(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.
EPSLA Reason 1 - Quarantine or Isolation Order

No paid sick if able to telework - Extenuating Circumstances - Example

- Firm permits lawyer to work from home,
- Power outage
- Eligible for paid sick during the power outage
EPSLA Reason 2

Employee is unable to work because he or she has been advised by a health care provider, to self-quarantine due to COVID-19

Must be based on Health Care Provider’s belief that employee:
- Has COVID-19
- may have COVID-19; or
- Is particularly vulnerable to COVID-19.

Self-quarantining must prevent the employee from working = paid leave
**EPSLA Reason 2**

Employee is unable to work - self-quarantine due to COVID-19

Able to Telework = No Sick Leave if:

(a) his or her employer has work for the employee to perform;

(b) the employer permits work from the location where the employee is self-quarantining; and

(c) there are no extenuating circumstances, such as serious COVID-19 symptoms, that prevent the employee from performing that work.

Example: if the lawyer above can work while self-quarantining at home, cannot take paid sick leave
EPSLA Reason 3

Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

- Covid Symptoms = fever, dry cough, shortness of breath, or other symptoms ID’d by CDC
- Paid sick - limited to time employee unable to work because taking affirmative steps to obtain medical diagnosis
  - Affirmative Steps = time spent making, waiting for, or attending an appointment for a test for COVID-19)
EPSLA Reason 3

Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

- No paid sick - if not seeking medical diagnosis
- No paid sick - if able to telework while waiting for diagnosis and:
  (a) there is work to perform;
  (b) employer permits employee to perform work where the employee is waiting; and
  (c) no extenuating circumstances, (serious COVID-19 symptoms that prevent employee from performing that work)
EPSLA Reason 3

Employee experiencing COVID symptoms + seeking medical diagnosis.

Paid leave if:

1. Tests positive for COVID-19
   ▶ Regardless of the symptoms experienced
   ▶ Healthcare provider advises to self-quarantine

2. Awaiting test result
   ▶ Unable to telework
   ▶ Regardless of severity of symptoms

3. Employee seeks medical advice
   ▶ Told does not meet testing criteria,
   ▶ Advised to self-quarantine (cannot telework?)
EPSLA Reason 4

Paid Sick Leave when:
Employee is unable to work because he or she needs 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
EPSLA Reason 4

Employee is unable to work - caring for another individual (Quarantine Order or Self Quarantine)

- “But for”- need to care for individual, employee would be able to perform work for employer
  - No paid sick leave - if Employer has no work
- Personal relationship with the individual cared for
  - family member, roommate, or
  - similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined.
EPSLA Reason 5

Employee is unable to work because the employee needs to care for his or her 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.
EPSLA Reason 5

Employee needs to care for child because school/childcare closed

- *but for* the need to care of child
  - if employer has no work, then no paid leave
- actually needs to care for child
  - Another suitable individual (co-parent, co-guardian, or the usual child care provider) is available then no paid leave)
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.
EPSLA Telework

Employees must record and be paid for telework as if it was work performed on the employer’s worksite.

Must pay OT; DT.

Employer is not responsible for Unreported Hours.
Highly Flexible Telework Arrangements

The FFCRA and the DOL’s regulations encourage use of “highly flexible telework arrangements” *but for* the need to care of child

- Unconventional times
- Permit tending to family and other responsibilities
  - Teaching children whose schools are closed for COVID reasons
- Suspend Continuous Workday guidance (29 CFR 790.6) continuous workday guidance generally provide that all time between performance of the first and last principal activities is compensable work time
Highly Flexible Telework Arrangements

Example: Unconventional hours

Telework from 7-9 a.m., 12:30-3 p.m., and 7-9 p.m. on weekdays.

This allows an employee, to help teach children whose school is closed or assist the employee’s parents who are temporarily living with the family, reserving work times when there are fewer distractions.

Pay all hours actually worked—7.5 hours—that day, but not all 14 hours between the employee’s first principal activity at 7 a.m. and last at 9 p.m.
FTE = 80 hours of paid sick leave

PT = number of hours that such employee works, on average, over a 2-week period
Employee may take expanded family and medical leave if the employee is unable to work due to a need for leave to care for his or her 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.
EFMLEA

- closures or unavailability “due to a public health emergency,”
  - “an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

- children
  - under 18 years of age or
  - 18 years of age or older and incapable of self-care because of a mental or physical disability”
Maximum flexibility to employers and employees during the public health emergency should not impact the underlying relationships between an employer and an employee.

Nothing in this Act should be construed as impacting an employee’s exempt status under the FLSA. For example, an employee’s use of intermittent leave combined with either paid sick leave or expanded family and medical leave should not be construed as undermining the employee’s salary basis.
Sick Leave & EFMLEA working in tandem

- FFCRA paid leave to care for his or her child whose school or place of care is closed, or whose child care provider is unavailable, for a COVID-19 related reason.
  - 1st 10 days under EPSLA paid
  - Next 10 weeks - paid under EFMLEA
Calculation of Pay

- **For leave reasons (1), (2), or (3):** employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to $511 per day and $5,110 in the aggregate (over a 2-week period).

- **For leave reasons (4) or (6):** 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 $2,000 in the aggregate (over a 2-week period).

- **For leave reason (5):** 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 a 12-week period).
Example:

- Employee who works twelve hours each day for three days each workweek, or a total of 36 hours each workweek. This employee would be entitled to 72 hours of paid sick leave under the EPSLA to care for his or her child, which lasts for two workweeks.

- The employee, however, would not be able to take paid expanded family and medical leave at the end of two workweeks time because he would have taken only six workdays of such leave, and the ten-day period of unpaid leave would still be in effect.

- In order to have a continuous income stream until the ten-day unpaid period of expanded family and medical leave expired, the employee would need an additional 48 hours of paid sick leave.
Example

- A second employee who works six hours each day for six days each workweek, also for a total of 36 hours each workweek. The second employee would likewise be entitled to 72 hours of paid sick leave under the EPSLA to care for his or her child, which lasts for two workweeks or twelve workdays.

- The period of unpaid expanded family and medical leave would expire after ten workdays—two workdays before the second employee runs out of paid sick leave.

- The second employee may transition from paid sick leave to expanded family and medical leave after ten workdays, leaving two days of paid sick leave unused. In other words, the second employee would have two more days of paid leave than necessary to have a continuous income stream at two-thirds the regular rate while caring for his or her child.
Workplace

- Essential Businesses, Critical Infrastructure, Minimum Basic Operations
  - Ongoing workforce
  - Social Distancing
    - Stagger shifts, remote work
  - OSHA guidance: [https://www.osha.gov/Publications/OSHA3990.pdf](https://www.osha.gov/Publications/OSHA3990.pdf)
  - Safe workplace protocols, wipedown surfaces, sanitize, handwashing
Workplace

- Employee privacy - EEOC guidance
  - Cannot compel vaccines
  - Taking Employees’ Temperatures
  - Experiencing COVID-19 symptoms
  - Employee tests positive with COVID-19
  - Return to Work

- [https://www.eeoc.gov/facts/pandemic_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html)
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