



e-Alert: COVID-19

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DOL Offers Temporary Rule on Paid Leave Under the FFCRA

Background

The Department of Labor (DOL) has issued a Temporary Rule to clarify two paid leave provisions of the Families First Coronavirus Response Act (FFCRA). The two provisions are the Emergency Paid Sick Leave Act (EPSLA) and the Emergency FMLA Expansion Act (EFMLEA).

Summary

The DOL's Temporary Rule clarifying the paid leave provisions is an extensive and detailed document, so we are only capturing some of its key points here. This summary is not a substitute for reading the Temporary Rule in full. You can find the full text of the Temporary Rule [here](#), and a summary of some of its key points below:

- The Temporary Rule clarifies that the leaves granted under these two provisions

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interact differently with other leave types already granted by employers.

- The two weeks' paid leave granted under the EPSLA is *in addition to* any paid time off (PTO) already available to employees, and employers cannot require employees to take other leave before the leave granted by the EPSLA.
- By contrast, Expanded FLMA Leave (which provides up to 10 weeks of paid, and two weeks unpaid, leave) counts *toward* the 12 weeks of standard FMLA leave to which the employee may otherwise be entitled.
- As with the FMLA the employer may require employees to take other forms of available paid time off concurrent with their Expanded FMLA leave, if the employer does not require usage the employee may choose to use available paid time off.
- The employee may also choose to use the paid sick leave granted to them by the EPSLA during the first two unpaid weeks of their Expanded FMLA Leave.
- Employees are not permitted to collect paid sick leave if their employer is temporarily shut down or has no work to offer them, even if the reason for this closure or lack of work is the COVID-19 outbreak. This leave is only available to employees who would be able to work or telework if not for their qualifying COVID-19 related condition.
- Multiple parents may not simultaneously take paid leave to care for a child whose school or daycare is closed due to COVID-19. In order to take either paid sick leave or Expanded FMLA Leave, the employee must provide a signed statement certifying that no other suitable person is available to care for the child or children during the period of their leave. Intermittent leave is permitted if, for example, co-parents were to alternate weeks of leave to care for a child. The dates of their leave just can't overlap.
- The Temporary Rule elaborates on the Small Business Exemption for businesses under 50 employees. The key point is that the exemption only applies to leave that has been requested to care for a child whose school or daycare is closed due to COVID-19, and the employer must demonstrate that granting the leave would jeopardize the viability of their business.
- Employers must clearly document and retain written records for all leaves requested by employees, whether they are approved or denied. If denied, the employer must include a written justification for the denial by an authorized business officer of the company. Employers must keep the documentation for four years.
- Employees must provide reasonable notice in writing to their employer if they need to request leave under any of the FFCRA's provisions. This written notice should include:
 - The employee's name;
 - The date or dates of the requested leave;
 - A statement of the COVID-19 related reason for which the employee is

- requesting leave;
- o Written documentation supporting that reason; and
- o A statement by the employee that they are unable to work or telework due to the reason provided.
- The Temporary Rule also provides more specific definitions of the various terms and vocabulary included in the FFCRA, calculations of how much part-time employees should be paid under different provisions, and other details.

Employer Next Steps

- Review the DOL's Temporary Rule to gain an understanding of the terms, conditions, and requirements of the FFCRA's paid leave provisions, both for employers and their staff.
- Work with a trained HR professional to address any outstanding questions about how this law applies to you and your business.
- Clearly communicate with your staff to keep them informed of their rights and obligations as well as any responsive steps that your company is taking.
- If you are a Full-Service or Virtual HR client and would like our assistance to answer your questions or update your policies, please [email us](#).

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