

# DOL PROVIDES MORE CLARITY ON FAMILIES FIRST CORONAVIRUS RESPONSE ACT LEAVE PROVISIONS

*Hodgson Russ Labor & Employment Alert*  
March 29, 2020

On March 26, 2020 the US Department of Labor (USDOL) issued a second round of questions and answers interpreting the Emergency Paid Sick Leave Act (EPSL) and Emergency Family and Medical Leave Expansion Act (EFMLEA) provisions of the Families First Coronavirus Response Act (FFCRA). We addressed the first Q&A from the USDOL, which focused mainly on employer coverage, [here](#).

The FFCRA takes effect on [April 1, 2020](#).

## Employees Must Document Their Need for EPSL and EFMLEA

Employees must provide documentation of their need for leave. The type of documentation depends on the type of leave. Examples of documentation include:

- The source of any quarantine or isolation order, or the health care provider who has advised the employee to self-quarantine.
- Notice of school or daycare closing published in a newspaper, online, or an email from an official or employee of the school or daycare.

Employers must retain the requisite documentation to support the applicability of tax credits taken for the cost of the leave.

## Teleworking Employees Are Entitled to Regular Wages

Employees who are able to work remotely and do so must be paid their normal wages; teleworking employees are not eligible for EPSL or EFMLEA unless they incur a qualifying circumstance. In other words, employers may not apply the tax credits available under the FFCRA to offset the wages paid to employees working remotely who do not have a qualifying need for leave.

## Intermittent Leave Permitted, But Not Required, in Limited Circumstances

Intermittent leave is permitted, but not required, for employees who cannot work due to a child's school closing [subject to the employer's agreement](#).

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### EPSL and EFMLEA Not Available for Previously Furloughed Employees

Employee are only eligible for benefits under EPSL or EFMLEA if their employer has work available for them to do.

Therefore, employees who were laid off, furloughed, or otherwise sent home without work before April 1 are NOT entitled to either EPSL or FMLA. This is true regardless of whether the cause of the furlough or layoff was an employer's lack of work, or a government-issued worksite closure order. Likewise, an employee whose worksite closes, or who is furloughed or laid-off after April 1, will not be eligible for the benefits.

Employees in these circumstances may be entitled to unemployment insurance benefits, but at no time may an employee collect leave benefits under the FFCRA while also collecting unemployment.

In the event that an employer reduces an employee's hours, the employee may not use EPSL or EFMLEA to substitute for the lost work time. In that circumstance, the employee is not prevented from working those hours due to a FFCRA-leave qualifying reason (even if the reduction was somehow related to COVID-19).

### Employees on FFCRA Leave Maintain Health Care Coverage

An employee taking leave under the EPSL or the EFMLEA is entitled to maintain his or her employer-provided health care coverage on the same terms as in effect prior to commencing the leave, including the premium cost sharing between the employee and the employer.

### Joint Use of EPSL/EFMLEA and Accrued PTO Permitted But Not Required

An employee may use accrued paid time off (PTO) while receiving benefits under the EPSL or EFMLEA only with the employer's consent. Likewise, an employer cannot force an employee to use accrued PTO.

### Tax Credits Not Available for Paid Leave in Excess of Required Amount

An employer may pay their employees in excess of the FFCRA's requirements, whether through the application of accrued PTO or otherwise providing additional payments. However, an employer may not claim, and will not receive tax credit, for supplemental amounts paid in excess of EPSL or EFMLEA requirements.

### Contributions to Multiemployer Plans Permitted to Satisfy FFCRA Requirements

An employer may satisfy its legal obligations under EPSL and EFMLEA by contributing the amount to which each employee is entitled under the FFCRA to its multiemployer fund or plan in accordance with the existing collective bargaining agreement.

The full listing of the questions and answers, including those previously published by the USDOL, can be found **here**.

Hodgson Russ is closely monitoring all labor and employment issues related to the ongoing Coronavirus pandemic. If you have any questions, please contact a member of our Labor and Employment team. **Please check our Coronavirus Resource Center to view many other alerts our attorneys in various practice areas have published on topics related to the pandemic.**

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