
Webinar Sponsored by Greater Miami Chamber of Commerce HR & Workforce Development Committee

April 7, 2020
Quick Recap of Available Benefits For Employers ≤ 499 Employees

Emergency Paid Sick Leave for 6 qualifying COVID-19 reasons

- Up to 80 hours (full-time ees) or two week equivalent (part-time ees)
- Full pay at regular rate if leave involves self-quarantine or diagnosis
- 2/3 pay if leave involves child out of school/daycare or care for others, or other future “substantially similar” conditions specified by HHS
- Maximum of $511 daily/$5,110 total (or $200 daily/$2000 total for familycare)

Emergency Family and Medical Leave Act Expansion

- Limited to employees employed 30+ days and cannot work/telework
- Up to 12 weeks/year (first 2 weeks unpaid, up to 10 more weeks paid)
- **Only permissible reason**: child out of school or childcare due to virus. THIS IS A NEW REASON FOR LEAVE, NOT MORE WEEKS
- Paid at 2/3 employee’s regular rate, job-protected
- Maximum of $200 daily/$12,000 total
Small Business Exemption (\(\leq 49\) Employees)

- Employee’s leave is to care for his/her child whose school or place of care is closed (or child care provider is unavailable), but only if requirements of FFCRA jeopardize business viability

- No application process - exemption applies if employer decides:
  - Leave would result in financial obligations greater than available revenues and cause company to cease operating at a minimal capacity; OR
  - Employee’s absence would entail a substantial risk to the financial health or operational capabilities of the business because of the employee’s specialized skills, knowledge of the business, or responsibilities; OR
  - Insufficient employees able, willing, and qualified at time and place needed to perform labor or services provided by the employee, and these labor or services are needed for business to operate at a minimal capacity.
Key Exemptions

Health Care Employees

• Employers *may* exclude employees who are either health care employees or emergency responders

• Health care providers are:
  • 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 provider, any facility that performs laboratory or medical testing, pharmacy, OR any similar institution, employer, or entity.

• Emergency responders are:
  • Anyone necessary for transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. (Long list of examples at DOL website)
Interaction With PTO Policies

• EPSL is *in addition* to normal PTO, paid sick, & vacation benefits. For the two weeks (up to 80 hours), employee has *sole discretion* to use EPSL or any accrued paid leave provided by employer or local laws; employer cannot dictate use of accrued, employer-paid leave.

• EFMLA is different
  • For first 2 weeks, employee can elect, or employer can require, using accrued leave through employer’s plan. Employee can use EPSL and/or employer’s plan, or both, to “top off” to 100% of their pay.
  • For remaining 10 weeks of EFMLA, if employee is eligible due to school closures/childcare unavailability, employer *cannot require* employee to “top off” EPSL or EFMLA with his/her own accrued paid leave unless employee specifically agrees. This may require further DOL guidance.
Notice and Documentation Requirements

• Poster must be conspicuously posted, may be distributed online, posted on employer website, directly mailed or e-mailed to employees
  • Does not have to be visible to job applicants

• DOL Spanish, English and Korean FFCRA posters available online at www.dol.gov/agencies/whd
  • Translation not required, but ...
  • Multiple languages will soon be available
  • Employer can use its own poster design if substantially compliant

Temporary Non-Enforcement Period by DOL

- **DOL** will not bring enforcement actions against employer for violations through April 17, 2020 ...
  - Provided the employer acted “reasonably” and “in good faith”
  - Employer remedies any violations
  - Violations were not “willful”
    - “Retaliation” by employer would almost certainly be considered “willful.” Employers may *not* retaliate (discharge, demote, or otherwise discriminate) against employees who lawfully take leave, complain, or pursue legal action for a violation.
  - DOL receive a written communication from the employer to comply with the FFCRA in the future
- Having said that, **private employees** can bring individual or group actions (FLSA and/or FMLA) for wages, penalties, attorneys’ fees.
Resource Links

Hunton Andrews Kurth LLP Labor and Employment Pandemic Resource Center

DOL Fact Sheets

Families First Coronavirus Response Act: Employee Paid Leave Rights (PDF)
• Spanish (PDF)

Families First Coronavirus Response Act: Employer Paid Leave Requirements (PDF)
• Spanish (PDF)

DOL Questions and Answers

Families First Coronavirus Response Act: Questions and Answers

DOL Poster

Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act (FFCRA)
• Spanish

Families First Coronavirus Response Act Notice – Frequently Asked Questions