

Unpacking the Families First Coronavirus Response Act KABA Webinar

Tuesday, March 31, 2020

Oyvind Wistrom
Lindner & Marsack, S.C.
Milwaukee, Wisconsin
www.lindner-marsack.com

L I N D N E R
— & —
M A R S A C K
ATTORNEYS AT LAW

The Families First Coronavirus Response Act (FFCRA) has been signed into law.

What does this mean for employers?

What we will cover today

What are the specific provisions of FFCRA?

Which employers need to comply
with FFCRA?

How much paid sick time is required?

When does FFCRA apply and when does it
end?

What Are the Provisions of FFCRA?

- Expansion of Family & Medical Leave Act (E-FMLA)
- Emergency Paid Sick Leave (EPSL)
- Employer tax credits
- Federal funding for unemployment

Which Employers Need to Comply?

- E-FMLA and EPSL apply to all employers with fewer than 500 employees
 - How do you count the 500 employees?
 - “integrated business test”
- Health care providers & first responders are exempt under the Act
- Employers with < 50 employees may apply for exemption
 - Must establish that compliance would jeopardize viability
 - DOL answers to Question 58

What are the E-FMLA Provisions?

- Expansion of FMLA
- New type of approved leave – public health emergency leave related to COVID-19 pandemic
- New leave is paid (weeks 3-12)
- Employee = anyone employed at least 30 days
- Employer = all employers <500 employees (potential exemptions)

What are the E-FMLA Provisions?

- Eligibility:
 - Employee is unable to work (or telework)
 - Due to a need to care for a child under age 18
 - School or childcare closures related to COVID-19
 - Childcare provider unavailable due to COVID-19

- Restoration:
 - Employees entitled to restoration to same/similar position
 - No guaranty of restoration to employers < 25 employees in some circumstances

What are the E-FMLA Provisions?

- Pay provisions:
 - First 10 days (2 weeks) are unpaid
 - Employee may substitute paid leave to cover first 10 days
 - Subsequent absences (weeks 3-12) paid at 2/3 of employee's regular rate
 - Special rules for employees with variable pay rates
 - Pay is capped at \$200/day and \$10,000 in the aggregate

What Are the EPSL Provisions?

- Employee = applies to ALL employees
 - No defined length of service
 - Available to employees under Collective Bargaining Agreements
- Employer = all employers <500 employees
 - Potential exemptions
- This is leave *in addition to* your existing leave policies
 - Cannot change existing policies
- EPSL is paid before any other paid leave available
- No carry-over from year to year

What Are the EPSL Provisions?

- Reasons for leave: Employee is unable to work or telework because of:
 - Employee is subject to quarantine related to COVID-19
 - Employee is advised to self-quarantine due to COVID-19-related concerns
 - Employee has COVID-19-related symptoms and is seeking a diagnosis
 - Employee is caring for individual subject to COVID-19 quarantine or advised to quarantine
 - Employee is caring for child if school/childcare is closed or care provider unavailable due to COVID-19 precautions
 - Employee experiencing other similar conditions defined by HHS in consult with DOL or Treasury

What Are the EPSL Provisions?

- Full time employees – capped at 80 hours of pay
- Part time employees – typical hours worked during a 2-week pay period
- Paid at employee's regular rate or minimum wage, whichever is greater
- 100% pay, not to exceed \$511/day and \$5,110 aggregate for:
 - Employee is subject to quarantine related to COVID-19
 - Employee is advised to self-quarantine due to COVID-19-related concerns
 - Employee has COVID-19-related symptoms and is seeking a diagnosis
- 2/3 pay, not to exceed \$200/day and \$2,000 aggregate for:
 - Employee is caring for individual subject to COVID-19 quarantine or advised to quarantine
 - Employee is caring for child if school/childcare is closed or care provider unavailable due to COVID-19 precautions
 - Employee experiencing other similar conditions defined by HHS in consult with DOL or Treasury

When Does FFCRA Start & End?

- Law takes effect no later than 15 days after signed by the President
 - Effective date – April 1, 2020
- Slated to sunset on December 31, 2020
- DOL issued poster on March 25, 2020
 - <https://www.dol.gov/agencies/whd/posters>
 - Employers obligated to post

How Does This Affect My Company Financially?

- Tax credits are available to private employers providing required leave. Public employers not eligible for the credit.
- Credits are capped and provided on an employer's FICA taxes.
- Consult your tax professional for further guidance on the details of the credit.

What About Unemployment?

- Unprecedented Unemployment levels
 - Many states now reporting “unprecedented” number of claims
 - As of March 27, 2020, 3.3 million American filed for UI benefits
- FFCRA allocates \$1 billion in emergency state grants to assist with processing and paying unemployment insurance (UI) benefits under some circumstances.
- Once enacted, temporary assistance will be available through December 31, 2020.
 - Benefit is for job losses (or, in some cases, reduced hours) related to COVID-19 economic downturn. *It is not paid leave.*
 - Employers will be required to notify laid-off workers about potential UI eligibility. DOL will provide a notice with model language.

Wisconsin Unemployment

- On March 19, 2020, Gov. Evers issued Emergency Order #7:
 - Waives the requirement that UI claimants conduct at least four weekly work search actions during the COVID-19 emergency. This section of the order is retroactively effective to March 12, 2020.
 - Ensures that claimants who are otherwise eligible but out of work due to COVID-19 are considered available for work and therefore eligible for benefits.“
 - One week waiting period still in effect.

Q&A Session

Can essential business employers request any type of verification concerning the need for either EPSL or E-FMLA leave?

Q&A Session

If we reduce our employees hours, can they file for unemployment assistance in the state of WI? Is there a minimum hour requirement? If they are accepted would they also get the \$600 stimulus additional unemployment pay?

Q&A Session

I'm from one of the school's in the area. We're obviously closed. Some of our hourly employees are out of work because there is no aspect of their job that they can do from home. However, they have children enrolled in the school. Can we use the extended FMLA to at least pay them 2/3 of their normal pay because they can't work because school is closed?

Q&A Session

Can you please clarify "unable to telework?"

All of our staff have been teleworking since March 23rd (some with kids and some without). We have been very flexible with working hours, allowing our staff to work outside the normal 8-5 so they can take care of homeschooling and childcare needs. Could an employee, who has been teleworking with children at home since March 23rd, now say they would like to take the extended FMLA even though we have given them all the equipment and flexibility to work from home?

Q&A Session

How does an employer administer the new FFCRA for employees that have accrued sick leave banks? Is the paid sick leave in addition to the employees' accrued sick bank benefit or intended for those employees who do not have the benefit of paid sick time currently?

Q&A Session

Could you please speak to the exemptions from the Secretary of Labor under 50 employees exemption and where to find the forms to file for that process to file?

Q&A Session

The Emergency FMLA portion of the FFCRA is only applicable to reason #5, which will then be reimbursed through a tax credit. Does the new law require employers with under 50 employees to provide FMLA or paid leave for any other reason?

Q&A Session

Are there any web-sites where one can view documentation needed for the government to receive the tax credit?

Are there any forms available for use to download for the documentation process?

<https://www.irs.gov/coronavirus>

Q&A Session

Could you address an employer's right to implement furloughs, reduced work-weeks and temporary or permanent layoffs made necessary by COVID-19? Does it matter whether the affected employees are exempt or non-exempt?

Q&A Session

Health care workers were specifically exempted from the E-FMLA and sick leave requirements... if we decide to voluntarily pay sick leave when our team members get sick, are we able to recapture the costs with the tax credit?

Q&A Session

For the E-FMLA provision, can both parents take leave at the same time and receive paid benefits? Does it matter if both parents work for the same employer?

Q&A Session

Can an employee take E-FMLA intermittently? For example, if she and her husband rotate weeks staying home with children, can she take 12 weeks E-FMLA, one week on, one week off, spread throughout the 2020 calendar year if her childcare center remains closed?

Q&A Session

Does the E-FMLA allow employees to take an additional 12 weeks of FMLA? For example, if Jane took 10 weeks of FMLA for birth of child in January and returned to work in March, is she eligible to take an additional 12 weeks of E-FMLA?

Q&A Session

As of April 1, five employees from *XYZ Company* begin leave under the E-FMLA as their kid's school and/or childcare is closed. What rights do these employees have, if two weeks into their leave, the employer implements layoffs due to a decline in business? If the employee is impacted by a layoff, when does E-FMLA coverage cease?

Q&A Session

The company allows many employees to work remote. Jane is working remote, but indicates she can only work 4 hours per day and then must care for her children due to a school closure. Is Jane entitled to E-FMLA? How much pay does she receive?

Q&A Session

Company needed to invoke temporary layoffs for a group of employees, effective March 16. On April 1, when FFCRA takes effect, can those employees take advantage of the paid sick and E-FMLA benefits if eligible?

Thank you!

Oyvind Wistrom

owistrom@lindner-marsack.com

Lindner & Marsack, S.C.

411 E. Wisconsin Avenue, Suite 1800

Milwaukee, WI 53202-4498

(414) 273-3910

LINDNER
**&**
MARSACK
ATTORNEYS AT LAW

(c) 2020 Lindner & Marsack, S.C. This presentation is not legal advice.
Contact Lindner & Marsack, S.C. to discuss your specific issue.