



**Families First Coronavirus Response Act
(FFCRA) Update:**
Practical Answers to Frequently Asked Questions

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April 20, 2021

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American Rescue Plan Act



On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (the “Act”)

- FFCRA originally ended on December 31, 2020
- The Consolidated Appropriations Act of 2021 extended the payroll tax credits available to employers who voluntarily decided to continue FFCRA-type leave through March 31, 2021

The Act extends and expands the FFCRA tax credits through September 30, 2021, incentivizing small and midsize employers to provide paid time off for COVID-19 related reasons through the pandemic

Goal Today



- To remember what FFCRA Requires
- To review what the Act did
- To answer FAQs (and yours)

FFCRA (a quick review)



Two types of paid leave:

1. Emergency Paid Sick Leave (EPSL)
2. Emergency Paid Family Medical Leave (E-FMLA)

Covers all private (and most public) employers with 1-499 (under 500) employees

- Small Business Exception: businesses with under 50 employees exempt from providing FFCRA leave for childcare reasons if providing it would “jeopardize the viability of the business”

FFCRA - EPSL



Provides up to 80 hours (full-time) or “two weeks” (part-time) of paid sick leave for six COVID-19 related reasons

EPSL: Employee is unable to work (or telework) because they are:

1. Subject to a federal, state, local quarantine or isolation order;
2. Advised by a healthcare provider to self-quarantine for COVID-19 reasons;
3. Experiencing COVID symptoms and seeking a medical diagnosis;

FFCRA – EPSL (cont'd)



4. Caring for an individual subject to a quarantine/isolation order, or advised by a healthcare provider to self-quarantine;
5. Caring for their child whose school or place of care is closed/unavailable because of COVID; or
6. Is experiencing a substantially similar condition specified by federal government (* does not apply....yet)

EPSL Pay



Employee pay for up to 80 hours is capped:

- \$511/day and \$5,110 total for leave (for reasons related to employee)
 1. Government isolation/quarantine order,
 2. Healthcare provider advises self-quarantine, or
 3. Experiencing COVID-19 symptoms and seeking medical diagnosis
- Two-thirds of pay, capped at \$200/day and \$2,000 total
 4. Care of individual subject to #1 or #2 (above)
 5. Care of employee's child whose school/childcare closed or unavailable

EPSL - Remember this?



- Employees eligible on first day of employment
- Intermittent only if employer and employee agree
- Minimal documentation: e.g., name of healthcare provider, reason for leave; name of school/provider that is closed/unavailable and “no other person will be providing care for the child” during FFCRA
- In employee’s sole discretion to use; may agree “top off”
- May exclude healthcare workers and emergency responders

E-FMLA



- Only for employee who is caring for their child whose school/place of care closed/unavailable due to COVID-19
- Up to 12-weeks E-FMLA
 - 1st two weeks unpaid, but if unused may use EPSL
 - Remaining 10 weeks paid: 2/3 capped at \$200/day; \$10,000 total

E-FMLA - Remember this?



- Employees eligible after 30 days of employment
- Childcare provider = one caring for child and includes paid and unpaid providers who provide care on regular basis (grandparents/neighbors)
- “Hybrid”: if required to attend in-person some days, and on-line/remote others, DOL says “closed” on days child cannot attend in person
 - If parent’s voluntary choice to remain home on-line/remote, then not eligible
 - If school only offers remote, school is “closed” and eligible
- Oregon Family Medical Leave (OFLA) definition of “sick child” expanded to include care for employee’s child whose school or place of care “closed due to a state-wide public health emergency” (unpaid; intermittent)

American Rescue Plan Act – the new FFCRA



What we know about the Act in General

- Continues to apply only to employers with fewer than 500 employees
- Effective April 1, 2021, through September 30, 2021
- It continues as a tax credit statute and leave is not mandatory
 - If employers voluntarily provide EPSL or paid E-FMLA, they are entitled to certain tax credits

Reasons Employees May Use EPSL or E-FMLA Expanded



Remember the six (really 5) reasons employees could take EPSL, and for one reason under paid E-FMLA?

Starting April 1st:

- Employees may still take EPSL for FFCRA reasons, and
- E-FMLA expanded to include all FFCRA reasons, and

Reasons Employees May Use EPSL or E-FMLA Expanded (cont'd)



- The Act adds three additional reasons:
 1. Employee is obtaining a COVID-19 vaccine,
 2. Employee is recovering from any injury, disability, illness or condition related to immunization, and
 3. Employee is seeking or awaiting results of a diagnostic test for, or a medical diagnosis of COVID-19 and was either exposed or the employer requested such a test or diagnosis

*In other words: The (now) nine reasons for EPSL and E-FMLA are identical

Initial Unpaid Period of E-FMLA is Eliminated



- Original FFCRA: 1st two weeks of E-FMLA unpaid.
- The Act: Starting April 1st, the entire 12-week period of E-FMLA is paid, and overall amount is increased from \$10,000 to \$12,000
 - Pay rate (2/3 employee's regular rate) and daily cap (\$200) E-FMLA remains the same
 - Pay rate for EPSL (either 2/3 or 100%) and daily cap also remain the same

Reset of 80 Hours of EPSL



Employers who voluntarily allow employee to take EPSL must provide access to up to 80 hours of EPSL from April 1st through September 30, 2021 (proportionate amount for part-time employees)

- This is a reset of the EPSL clock. Any EPSL taken before April 1st (e.g., from 4/1/2020 – 3/31/2021) does not count toward the 80-hour cap

All for one and one for all

For the Act's new April – September 2021 tax credits, employers may not discriminate in favor of highly compensated employees, full-time employees, or employees based on tenure.

Reset of 80 Hours of EPSL (cont'd)



Other FFCRA Rules Remain the Same

If you decide to voluntarily extend paid FFCRA leave to receive the tax credits, the prior rules still apply:

- Coverage and eligibility
- Documentation
- For all covered reasons

Frequently Asked Questions (only my opinion & not legal advice)

1. Do employees also receive a new bucket of E-FMLA, too?

- We know as of April 1st, eligible employee may take 80 hours (10 days) of EPSL for any of the nine reasons.
- We also know the Act allows employees to take up to 12 weeks of E-FMLA as of April 1st

☞ suggests that “yes” – employees are entitled to E-FMLA, so long as they have FMLA available

*If an employee has not taken any FMLA, then 12 weeks of paid E-FMLA for COVID-19 reasons may be used.

Frequently Asked Questions (only my opinion & not legal advice)

2. Can employers provide EPSL, but not E-FMLA?

- No guidance
- Given it is voluntary leave, seems that employers may provide one and not the other, so long as they provide notice of the leave they are providing.

3. Can employers give less time/a portion of EPSL or E-FMLA?

- No guidance
- Given it is voluntary leave, seems that with notice to employees, employers may provide less (e.g., six weeks of E-FMLA, rather than 12)

Frequently Asked Questions (only my opinion & not legal advice)



4. Does E-FMLA exhaust the employee's FMLA 12-week entitlement?

- Practical and how employers treated E-FMLA in 2020:
 - If leave is taken for a reason covered by E-FMLA, it counts against an employee's 12-week FMLA entitlement.
 - Be prepared to retract FMLA designation
 - Less Risky: provide E-FMLA on top of any original FMLA

5. May we require employees to take PTO first, before voluntarily providing EPSL and E-FMLA?

- No. As before, employees may choose to take EPSL for COVID reasons. Employers may offer, and employees can agree to have their pay "topped off" by PTO (or other accrued leave).

Questions?

Thank you!

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