



NEW FEDERAL LAWS EXPLAINED

On March 18, 2020 President Trump signed into law the **Federal Emergency Paid Sick Leave Act** (EPSLA) and the **Federal Emergency Family & Medical Leave Expansion Act** or “Emergency FMLA (EFMLA).” Both of these laws apply to employers with less than 500 employees and both take effect no later than April 2, 2020 and both expire on December 31, 2020. These laws have a number of elements in them that we will attempt to explain briefly below. For more detailed information, please contact our office (we are open, but working remotely) or go to the links provided below.

Before you read the details below, please know that we have spent quite a lot of time reading what other resources have said and talking with our employment attorneys. **Based on what they have said, this is our advice which if you agree, you should put into place this week:** Give your employees a letter (we have a sample) explaining to them the following:

1. You are putting those that have no work on a “temporary layoff:”

- The letter will have a date that you are hoping to be able to rehire them. It will say that you will call them back sooner if there is work, and you may have to extend the date if there is no work. The date is important because it confirms that this is indeed temporary.
- They can file for unemployment in the meantime.
- If they have vacation or PTO in their bank, they can request it and you will pay it out a little at a time in conjunction with their unemployment benefits.
- You will continue their health insurance benefits through March (because they are paid for already) and you can decide if you will pay for them through April or beyond. You may also decide to pay for your employees’ contribution amount during this difficult time or you can make payment arrangements for when they return.

2. For those employees that can do some work, but can’t work full time:

- The letter will address the fact that they will be paid at their regular rate of pay when they are working, if possible. If you have to reduce their rate of pay for economic reasons, the letter will state that along with a date when you hope to be able to raise it to their normal wage rate. Again, the actual date may be sooner or later than what is stated.
- If you have exempt employees whose schedules are going to be reduced, you can change them to nonexempt for this period of time or you can

continue to pay them a salary as long as it is at or above the required exempt salary threshold. You cannot prorate the threshold.

- If available, they may be able to collect under a Reduced Earnings program offered as one of the programs available through the agency administering Unemployment Insurance.
- They can also collect some of their vacation or PTO if they request it and you approve.
- See above for health benefits suggestions.

3. For those employees who are continuing to work full-time:

- They are obviously paid their wages while they are working.
- It is permissible to reduce wage rates if necessary as revenues decrease.
- You should continue their health insurance benefits but may make separate considerations about their employee contribution if applicable.
- *These are the people who may be most impacted by the new laws because they are working until one of the following occurs.*

FEDERAL EMERGENCY PAID SICK LEAVE ACT (EPSLA)				
Related Issues	Employee is subject to federal, state or local quarantine or shelter in place (SIP)	Employee is ill with COVID-19	Employee is caring for an individual who is subject to an order to quarantine	Employee is caring for a child or children whose school or daycare facility is closed
Rate of sick pay to pay to employee	Regular pay rate	Regular pay rate	2/3 of regular pay rate	2/3 of regular pay rate
Is there a cap on pay?	Up to \$511/day and \$5,110 in aggregate	Up to \$511/day and \$5,110 in aggregate	Up to \$200/day and \$2,000 in aggregate	Up to \$200/day and \$2,000 in aggregate
Who pays sick pay?	Employer	Employer	Employer	Employer
Benefit for full-time employees	80 hours	80 hours	80 hours	80 hours
Benefit for part-time employees	The number of hours worked in a 2-week period averaged over past 6 months	The number of hours worked in a 2-week period averaged	The number of hours worked in a 2-week period averaged over past 6 months	The number of hours worked in a 2-week period averaged over past 6 months

		over past 6 months		
Date eligible	First day of work missed	First day of work missed	First day of work missed	First day of work missed
Is this paid sick leave benefit in addition to what we already offer?	Yes	Yes	Yes	Yes
Do employees have to have worked for the company a certain length of time before they are eligible?	No. ALL employees are eligible with some coverage exceptions for employees of healthcare providers and emergency responders	No. ALL employees are eligible with some coverage exceptions for employees of healthcare providers and emergency responders	No. ALL employees are eligible with some coverage exceptions for employees of healthcare providers and emergency responders	No. ALL employees are eligible with some coverage exceptions for employees of healthcare providers and emergency responders
Effective dates	April 2, 2020 to December 31, 2020	April 2, 2020 to December 31, 2020	April 2, 2020 to December 31, 2020	April 2, 2020 to December 31, 2020
Do I have to pay it all at once?	YES. It has to be paid BEFORE any other benefits are paid (Paid Sick Leave, PTO or vacation)	YES. It has to be paid BEFORE any other benefits are paid (Paid Sick Leave, PTO or vacation)	YES. It has to be paid BEFORE any other benefits are paid (Paid Sick Leave, PTO or vacation)	YES. It has to be paid BEFORE any other benefits are paid (Paid Sick Leave, PTO or vacation)
Do I have to track EPSLA sick leave?	Yes; we recommend adding it as a separate line item on the paystub	Yes; we recommend adding it as a separate line item on the paystub	Yes; we recommend adding it as a separate line item on the paystub	Yes; we recommend adding it as a separate line item on the paystub

What if my employees have used all their accruals?	They can still collect under this benefit	They can still collect under this benefit	They can still collect under this benefit	They can still collect under this benefit
Does it carry over to next year or is it paid upon termination?	No to both	No to both	No to both	No to both
Can I enforce reasonable notice if an employee wants to use paid sick leave?	Yes, after the first sick day	Yes, after the first sick day	Yes, after the first sick day	Yes, after the first sick day
Can I require employees to find their replacement if work is available?	No	No	No	No
Can I require employees to come to work if we are an "essential business?"	You can request that they come in because there is work, unless they are sick or a family member is sick.	N/A	If the employee is caring for someone who is ill, you would not want them to report.	The Secretary of Labor may exempt businesses with <50 employees from paying but no regs yet.
What has to go on the paystub or itemized wage statement?	If you pay EPSLA sick leave at a different rate, it has to be itemized on the paystub (Labor Code §226(a))	If you pay EPSLA sick leave at a different rate, it has to be itemized on the paystub (Labor Code §226(a))	If you pay EPSLA sick leave at a different rate, it has to be itemized on the paystub (Labor Code §226(a))	If you pay EPSLA sick leave at a different rate, it has to be itemized on the paystub (Labor Code §226(a))
Are there required notices, postings, policies, etc?	Yes. We will provide an Employee Handbook addendum for you eff. 4/2/2020	Yes. We will provide an Employee Handbook addendum for you eff. 4/2/2020	Yes. We will provide an Employee Handbook addendum for you eff. 4/2/2020	Yes. We will provide an Employee Handbook addendum for you eff. 4/2/2020

Tax Credit: Credited to employer's quarterly payroll tax filing (Form 941) as a reduction to FICA	Capped at \$511/day	Capped at \$511/day	Capped at \$200/day	Capped at \$200/day
When do employers get the tax credit?	Quarterly when they file their Form 941--check with your payroll provider	Quarterly when they file their Form 941-- check with your payroll provider	Quarterly when they file their Form 941-- check with your payroll provider	Quarterly when they file their Form 941--check with your payroll provider
Is it a dollar-for- dollar credit?	Yes, up to the cap	Yes, up to the cap	Yes, up to the cap	Yes, up to the cap

There are still many unanswered questions about the Emergency Family & Medical Leave Expansion Act (EFMLA). We are hoping that employers with less than 50 employees will be automatically exempt as they are from the federal and state family medical leaves (FMLA and CFRA), but as of this date, they are not exempt. There is a provision allowing for an exemption issued by the federal Secretary of Labor, but we do not anticipate anything being done quickly enough to solve the problem for our small clients with less than 50 employees by the effective date of April 2, 2020.

This will only apply to employees who are currently working.

FEDERAL EMERGENCY FAMILY & MEDICAL LEAVE EXPANSION ACT (EFMLA)				
Related Issues	Employee is subject to federal, state or local quarantine or shelter in place (SIP)	Employee is ill with COVID-19	Employee is caring for an individual who is subject to an order to quarantine	Employee is caring for a child or children whose school or daycare facility is closed

Effective dates	April 2, 2020 to December 31, 2020	April 2, 2020 to December 31, 2020	April 2, 2020 to December 31, 2020	April 2, 2020 to December 31, 2020
How many employees does an employer have to have to be required to offer EFMLA?	N/A	N/A	N/A	500 or less
We have less than 50 employees. Do I still have to offer this?	No	No	No	Yes
How long does an employee have to work for us before being eligible?	N/A	N/A	N/A	30 days
How long is the leave?	N/A	N/A	N/A	Up to 12 weeks
Do I have to pay the employee?	N/A	N/A	N/A	Yes, after the first 2 weeks you have to pay for up to the next 10 weeks
How much?	N/A	N/A	N/A	2/3 of their regular rate up to a cap of \$200/day and \$10,000 in the aggregate
What about the first 2 weeks that are unpaid?	N/A	N/A	N/A	Employee can use accrued paid sick leave, vacation or PTO
Can employees use one of the benefits offered under the Unemployment program?	N/A	N/A	N/A	TBD--We don't know yet as it wasn't addressed in the new law.

Is there guaranteed reinstatement?	N/A	N/A	N/A	Yes, if you have 25 or more employees
What if we have less than 25 employees?	N/A	N/A	N/A	You may deny reinstatement only if 1) the position no longer exists due to economic reasons, and 2) you have made reasonable efforts to restore the employee to an equivalent position, and 3) you make an effort to contact the employee if an equivalent position is available within one year.
If we have 50+ employees, is EFMLA in addition to FMLA?	Yes, but a SIP order does not qualify as a reason under regular FMLA	Yes, under this circumstance, if the employee is eligible for FMLA, they can receive it	Yes, under this circumstance, if the employee is eligible for FMLA, they can receive it	Yes, but this is not a qualifying reason under regular FMLA.
If we decide not to offer EFMLA, can an employee sue us?	N/A	N/A	N/A	No, but the Secretary of Labor can enforce EFMLA and may recover unpaid wages, benefits, interest and liquidated damages plus injunctive relief.

We are working diligently to keep up with the issues as they change almost daily. Please call or email us with questions and refer to some of the following websites for more information:

- • Your state's Unemployment Insurance website where you may find programs for employees who have been laid off and others who are not unemployed, but are not able to earn their full wage.
- • <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>
- • Your own state's department of labor website.

We are OPEN so please give us a call at 925-310-4824 or send us an email at:

Barbara Freet: barbara@hradvisors.net

Michelle Abaunza: michelle@hradvisors.net

Amy Freet: amy@hradvisors.net

We're here to assist you and we wish you and your families health and safety.

Warmly,

Barbara

Barbara Freet, PHR

Human Resource Advisors