



HR6201 – Families First Coronavirus Response Act Q&A March 22, 2020

I received such great questions about this Act that I thought it might be helpful to share the information with all members.

GENERAL QUESTIONS

Q1. When does the law take effect?

The FMLA and EPSL Acts take effect April 1, 2020 and expire December 31, 2020.

Q2. How do I handle requests for time off between now and when the law takes effect?

You may follow your current policies and practices, create interim policies/practices, or follow the Act.

FMLA PUBLIC HEALTH EMERGENCY-RELATED QUESTION

Q3. Can I require my employees to exhaust other options before taking paid FMLA Public Health Emergency Leave?

Qualified employees are eligible for this leave if their child’s school or place of care has been closed, or the child care provider is unavailable, due to the public health emergency. The Act does not require an employee to exhaust all other options (e.g. leave the child with a spouse who is staying at home, look for a day care provider who is available, etc.) before taking this leave. This is something the Secretary of Labor might address in the regulations, if prompted.

EMERGENCY PAID SICK LEAVE-RELATED QUESTIONS

Q4. I received a summary of the Act that said employers must provide 15 days of EPSL Leave...?

Section 5102 set the EPSL entitlement at 80 hours for full time employees, and prorated this benefit for part time employees and employees with varying schedules.

Q5. Is the EPSL pay rate the same regardless of whether an employee takes leave to attend to his/her own coronavirus-related needs, or takes it to assist another person?

Payments to employees taking EPSL to care for themselves:

- **Rate of Pay:** The higher of the employee’s regular rate of pay, the federal minimum wage, or the applicable state/local minimum wage.
- **Maximum payment:** Under Section 5110 paragraph (5) (a), EPSL taken for personal reasons may be capped at \$511 per day*.

Payments to employees taking EPSL to assist others:

- **Rate of Pay:** Employees who take EPSL to care for ‘Family Members’ are entitled to **two-thirds** their pay. (The pay rate before the adjustment is the same as that described in **Rate of Pay** above.)
- **Maximum payment:** Under Section 5110, paragraph (5) (a) EPSL taken to assist others may be capped at \$200 per day*.

* The **maximum payments** were added to the Act sometime after the first draft, but before the Act was signed. I missed this in the review. The Act encourages employers to be more generous than what the law requires but, when deciding the percentage of the employee's regular rate is to be paid, keep in mind the maximum tax credits are either \$511 or \$200/day.

Pending:

There is an inconsistency in the Act as to whether the 2/3 payment only applies to EPSL time taken to care for a family member, or also to time taken to assist any individual. Hopefully, the Regulations will fix this inconsistency. For planning purposes, I think it's safe to rely on the Department of Labor's website, which says the 2/3 payment will apply to EPSL time taken to assist 'an individual' (e.g., spouse, roommate, friend, neighbor.)

I am watching for the Notice of Proposed Rulemaking and will send out a *News Flash* when it's published.

In the meantime, here's a [link](#) to a page on the Department of Labor's website that includes information about these leave requirements *and* about the tax credits.

Pattie Berg
Legislative Chair