

HARDI

FFCRA

THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Updated with Government Guidance Through July 14, 2020

- First effective April 1, 2020
- Expires (as it stands now) December 31, 2020
- FFCRA contains 2 major Acts:
 - The Emergency Paid Sick Leave Act (E-PSLA)
 - The Emergency Paid Family and Medical Leave Expansion Act (E-FMLA)
- Both apply only to employers with fewer than 500 employees

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E-PSLA

SECTION 1: E-PSLA (EMERGENCY PAID SICK LEAVE ACT)

E-PSLA: General Rules/Requirements

- Who is eligible to take E-PSLA leave?
 - Eligible employees in companies with **fewer** than 500 employees, no matter employee was hired
 - “Covered employer” does not include employers of healthcare providers or emergency responders (see Section III for definitions)

- What E-PSLA Paid Sick Leave Are Employees Entitled to Receive?
 - Full-time Employees
 - up to 80 hours of paid sick leave, even if employee changes employers during the year
 - A full-time employee is either of the following:
 - A *regular schedule employee* who is normally scheduled to work at least 40 hours each workweek; OR
 - A *variable schedule employee* scheduled to work an average of 40 hours each workweek over the lesser of:
 - The six-month period ending on the date the employee takes paid sick leave
 - The entire period of the employee’s employment
 - A full-time employee who is scheduled to work more than 40 hours each workweek (overtime) must be paid the scheduled number of hours in the first week of leave and the remaining number of hours, up to 80, in the second week

- **Example:** A full-time employee who is regularly scheduled to work 45 hours per week must be given 45 of the 80 hours during the first week of paid sick leave. The remaining 35 hours would be used during the second week of paid sick leave
 - Part-time Employees
 - Employee works less than 40 hours each workweek:
 - *Regular schedule part-time employee:* entitled to E-PSLA paid sick leave up to the number of hours the employee is normally scheduled to work over two workweeks
 - *Variable schedule part-time employee* is entitled to E-PSLA paid sick leave up to 14 times the average number of hours worked per calendar day for the lesser of:
 - The six-month period ending on the date employee takes paid sick leave, OR
 - The entire period of the employee's employment
- Can E-PSLA Leave Be Taken Intermittently?
 - Full-time and part-time employees may take paid sick leave in separate periods of time, rather than in one continuous period ("intermittently") only if the employer and employee agree
 - Agreement in writing is *encouraged*
 - Non-teleworkers: May be granted intermittent leave only if caring for son or daughter because school or childcare is closed (or the childcare provider unavailable) due to COVID-19 precautions. (*See* Reason 5/Qualifying Reasons for E-PSLA leave)
 - If a non-teleworking employee uses paid sick leave for Reasons 1-4 or 6 (*see below*), s/he must use permitted days of leave consecutively until s/he no longer has a qualifying reason to take paid sick leave – or E-PSLA leave runs out.
 - Teleworkers: May be granted intermittent leave for Reasons 1-6 only if unable to telework due to that reason

E-PSL: Qualifying Reasons for Leave

An employee may take E-PSLA leave s/he is unable to work for any combination of the following reasons. E-PSLA leave under any of the following is limited to the time that an employee is unable to either: (a) work at the employer's normal workplace; or (b) telework due to that qualified reason

1. **Employee is subject to a federal, state, or local quarantine order related to COVID-19**

Such as government shut-down and shelter-in-place orders

2. **A healthcare provider advised the employee to self-quarantine due to concerns related to COVID-19**

- A healthcare provider is:
 - Licensed Doctor of Medicine
 - Licensed nurse practitioner
 - Any healthcare provider permitted to issue a certification under FMLA
- The healthcare provider's advice must be based on the belief that the employee either has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19

3. **Employee is experiencing COVID-19 symptoms and seeking a related medical diagnosis from a healthcare provider**

- Relevant symptoms include:
 - Fever
 - Dry cough
 - Shortness of breath
 - *Any other COVID-19 symptoms identified by the U.S. CDC*
- Paid sick leave for this reason is limited to the time employee is unable to work at employer's normal workplace or to telework because s/he is taking steps to obtain a medical diagnosis, including:
 - Making medical appointments

- Waiting for medical appointments
 - Attending medical appointments
4. Employee is caring for an individual subject to a federal, state, or local quarantine order related to COVID-19 or who has been advised to self-quarantine due to concerns related to COVID-19
- The individual the employee is caring for must be one of the following:
 - Immediate family member
 - Person who regularly resides in the employee's home
 - Person the employee is expected to care for based on a special relationship
 - Healthcare provider's advice to self-quarantine must be based on the belief that the individual either has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19
5. Employee is caring for son or daughter whose school or place of care is closed (or the childcare provider is unavailable) due to COVID-19 precautions
- A qualified son or daughter is any of the following that is:
 - Under 18 years old:
 - Biological child
 - Adopted child
 - Foster child
 - Stepchild
 - Legal ward
 - Child of a person standing *in loco parentis*
 - Also: any of the above who is 18 years old or older; has a mental or physical disability; and is incapable of self-care because of that disability
 - A qualified place of care is a physical location where care is provided for a qualifying child, including:
 - Daycare facilities

- Preschools
 - Schools
 - Before- or after-school care programs
 - Summer camps
- Qualified *childcare provider* receives compensation for providing childcare services on a regular basis and includes any:
- Childcare center
 - Group home
 - Family childcare provider (e.g., nanny, au pair, babysitter)
 - Any other provider that is *licensed, regulated, or registered under state law*
 - Any unlicensed provider who is a *family member or friend* who regularly cares for the child
- Leave taken under this reason *may be taken in addition* to leave taken for this reason under the E-FMLA. If this occurs, the benefits of the two Acts run *concurrently*

6. Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor

- To date, the U.S. Department of Health and Human Services has not identified any such “substantially similar condition” that would allow an employee to take paid sick leave

E-PSL: Exception to Qualifying Reasons for the Paid Sick Leave

If employer has no work for the employee to perform—either on site by teleworking—during the requested leave period or employer furloughs the employee, employee may not take paid sick leave. This includes employer’s closing the worksite, for example, due to government restrictions and regulations or lack of business.

E-PSL: Amount of Pay for E-PSLA Paid Leave

- For leave taken for reasons 1-3 (above):
 - Employees are paid the higher of:
 - Their regular hourly rate, **or**
 - The applicable minimum wage
 - Up to a total of \$511/day or \$5,110 in the aggregate
- For leave taken for reasons 4-6 (above):
 - Employees are paid the higher of:
 - 2/3 their regular hourly rate, **or**
 - 2/3 the applicable minimum wage
 - Up to the limit of \$200/day or \$2,000 in the aggregate
- Regardless of the reason for leave, overtime pay is not included in the payment calculation under the EPSLA even if an employee regularly works overtime
 - **Example:** If an employee is regularly scheduled to work 45 hours per week and takes leave under reason 4, the employer would pay 2/3 of that 45 hours (29.7 hours) at the regular straight time rate

E-PSL: Notice and Documentation Requirements

- Employee Requirements
 - Timing of Notice
 - *For leave taken for reasons 1-4 and 6 (above):*
 - An employer *may* require an employee to provide reasonable notice after the first day s/he takes paid sick leave. “Reasonable notice” is determined under *the facts and circumstances of each case*.
 - *For leave taken for reason 5 (above):*
 - If leave for this reason is foreseeable, employee must provide notice *as soon as practicable*

- Content of Notice: Employer may expect employee to provide information regarding the reason for requesting leave so that eligibility may be determined
 - For all qualifying reasons, employees must provide the following documentation:
 - His/her name
 - Date(s) for which s/he requests leave
 - A qualifying reason for requesting leave
 - Oral/written statement that s/he is unable to work *because of* that qualified reason
 - For reason 1, employees must *additionally* provide:
 - The name of the government entity that issued the quarantine/isolation order
 - For reason 2, employees must *additionally* provide:
 - The name of the healthcare provider who advised the employee to self-quarantine
 - For reason 4, employees must *additionally* provide *either*:
 - The name of the government entity that issued the quarantine/isolation order
 - The name of the healthcare provider who advised the individual to self-quarantine
 - For reason 5, employees must *additionally* provide:
 - Name of the son or daughter being cared for
 - Name of the school, place of care, or childcare provider that has closed or become unavailable

- A representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes paid sick leave
 - An employer may also require employees to submit additional documentation for the employer to claim an FFCRA tax credit
- Employer Requirements
 - Employers must retain all documentation related to employee requests for leave for 4 years, regardless of whether leave was granted or denied
 - Employer may also require additional documentation for the employer to claim an FFCRA tax credit

E-PSL: Employee Protections; Prohibited Acts; Enforcement

- Employee Protections
 - Paid sick leave is **in addition to** any other employer benefits an employee has or could accrue

Any other paid leave given by the employer *before* April 1, 2020 does not “count” toward E-PSLA. Even if, prior to April 1, the employer gave an employee paid sick leave for a qualifying reason under the EPSLA, employee is still entitled to the 80 total hours of paid sick leave for qualifying reasons *after* the April 1 effective date
- Employer Prohibited Acts
 - Employers cannot require employees to find their own replacements during an E-PSLA leave
 - Employers may not retaliate against an employee who takes paid sick leave or files a complaint under the EPSLA
 - Employer retaliation and failure to pay an employee paid sick leave are violations of the Fair Labor Standards Act (FLSA)

- Employees may be entitled to lost wages, an additional amount equal to the lost wages, attorneys' fees, and reinstatement
- Non-compliance is a criminal act
- Fines may go up to \$10,000
- Employers may not deny employees paid sick leave even if they have already used other types of available leave prior to requesting paid sick leave
- Employers may not require, coerce, or unduly influence an employee to first use other leave before using paid sick leave

E-PSL: Interactions with FMLA and E-FMLA

- Eligible employees are entitled to E-PSLA leave regardless of their entitlement to, or use, of any leave under the FMLA or E-FMLA

E-FMLA

SECTION 2: EMERGENCY PAID FAMILY AND MEDICAL LEAVE EXPANSION ACT (E-EMLA)

This section lists the general rules and requirements of the Emergency Family and Medical Leave Expansion Act.

E-FMLA: Employee Eligibility

- Employees employed for at least 30 calendar days

The CARES Act (Stimulus Bill passed on March 26, 2020) clarified: “employed for at least 30 calendar days” *includes* employees laid off on or after March 1, 2020, who had worked for the employer for not less than 30 of the last 60 calendar days prior to their layoff *and* were rehired

- Employees employed for *less than 30 days* are entitled to two weeks’ E-PSLA for any combination of the 6 qualifying reasons specified in the EPSLA.

E-FMLA: Qualifying Reasons for Taking Expanded Family and Medical Leave

Employee is entitled to E-FMLA if unable to work or telework due to a need to care for son or daughter if their school or place of care has been closed (or the childcare provider is unavailable) due to COVID-19-related reasons

- A qualified *son or daughter* is any of the following who is under 18:
 - Biological child
 - Adopted child
 - Foster child
 - Stepchild
 - Legal ward
 - Child of a person standing *in loco parentis*

- Any of the above who is 18 years old or older and also has a mental or physical disability and is incapable of self-care because of that disability
- A qualified *place of care* is a physical location including:
 - Daycare facilities
 - Preschools
 - Before- or after-school care programs
 - Summer camps
- A qualified *childcare provider* receives compensation for providing childcare services on a regular basis and includes any:
 - Childcare center
 - Group home
 - Family childcare provider (e.g., nanny, au pair, babysitter)
 - Any other provider that is *licensed, regulated, or registered (under state law)* provider
 - Any unlicensed provider who is a *family member or friend* who regularly cares for the child
- Leave for this reason may be taken in addition to leave also taken for this reason under the E-PSLA. These benefits of both Acts run concurrently.

E-FMLA: Exception to Qualifying Reasons for Taking E-FMLA Leave

If employer does not have work for the employee to perform—either on site or by teleworking—during the requested leave period or furloughs the employee, employee may not take expanded family and leave. This includes the employer closing the worksite, for example, due to government restrictions and regulations or lack of business.

E-FMLA: Amount of Expanded FMLA Leave Available to Employees

- Eligible employees may take up to twelve workweeks of expanded family and medical leave from April 1, 2020–December 31, 2020¹
 - *Regular- schedule employees*, the number of hours in a workweek is the number of regularly scheduled work week hours
 - If an employee’s regular schedule is more than 40 hours, the employer must use that regular schedule to determine the number of hours of E-FMLA paid
 - **Example:** If an employee regularly works 45 hours per week, s/he must be allowed 45 hours of expanded family and medical leave each week
 - *For variable-schedule employees*:
 - *If the employee has been employed for at least 6 months*, hours in a workweek IS THE average number of hours worked in the 6-month period preceding the leave
 - *If the employee has been employed less than 6 months*, hours in a workweek IS THE expected average hours anticipated to work during the leave
- Employees may take E-FMLA in separate periods of time (“intermittently”) only if the employer and employee agree
 - Agreement in writing is encouraged, but not required
- The employee may elect or employer may require employee to use other leave under the employer’s existing policies, such as PTO to run concurrently with any expanded family and medical leave time

¹ This 12-week total includes any regular FMLA leave already taken
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E-FMLA: Employee Pay Entitlement Under E-FMLA

- *For the first two workweeks (10 days) of leave*, the employer must provide employees with unpaid leave, which employees may (but are not required to) supplement with paid sick leave under the EPSLA or other accrued paid leave under the employer's existing leave policies
 - If the employee supplements these two weeks with paid sick leave under the EPSLA:
 - The employee is paid at least 2/3 the regular rate of pay, up to \$200/day
 - Employee and employer may, but are not required to, agree to supplement the 2/3 rate with paid leave the employee under existing policies so that the employee receives their full regular pay for this time period
 - If the employee supplements these two weeks with other paid leave under the employer's existing leave policies:
 - Employee is paid the full amount allowed under the employer's existing policy, even if that is more than \$200/day
- *For up to 10 workweeks (50 days) following the first two workweeks (10 days) of leave*, the employer must pay employees at least 2/3 of their regular pay, up to \$200/day (\$10,000 in the aggregate)
 - Regular pay IS the employee's average rate over the six-month period before the leave
 - Even if employee regularly works overtime, the rate of pay under the E-FMLA does not include any overtime pay in the calculation
 - **Example:** If an employee is regularly scheduled to work 45 hours per week, the employer would pay 2/3 of that 45 hours (29.7 hours) at the regular straight time rate
 - Exception: If employer requires employee or the employee elects to use other paid leave under the employer's existing policies—such as vacation or PTO—in addition to expanded family and medical leave, employer must pay employee the regular rate of pay

E-FMLA: Notice and Documentation Requirements

- Employee Requirements
 - Timing of Notice: If leave is to care for the employee's son or daughter due to a closure at school or place of care is foreseeable, employee must provide notice of paid sick leave *as soon as practicable*
 - Content of Notice: Employee is expected to provide information about the reason for leave
 - Employees must provide the following documentation:
 - Name
 - Date(s) for which leave is requested
 - A qualifying reason for leave
 - Oral/written statement of inability to work because of that qualified reason
 - Name of the son or daughter being cared for
 - Name of the school, place of care, or childcare provider closed or unavailable
 - A representation that no other suitable person will be caring for the son or daughter during the requested leave period
 - Employer may also require additional documentation to enable employer to claim FFCRA tax credit
- Employer Requirements
 - Must retain documentation related to employee requests for leave for 4 years, regardless of whether leave was granted or denied

E-FMLA: Employee's Job Restoration/Returning to Work

Employees generally have the right to return to work in the same or an equivalent position after taking E-FMLA, except when:

- Employer takes general employment actions, such as layoffs, that would have affected the employee regardless of whether s/he took leave; AND
 - Employer demonstrates that the employee would have been laid off even if the s/he not taken leave
- Employer determines that denying the employee to return to his/her job is necessary to prevent *substantial and grievous economic injury to the employer's operations*
- The employer employs less than 25 eligible employees and all the following are true:
 - Employee was on leave to care for son or daughter whose school or place of care was closed (or whose childcare provider was unavailable) for COVID-19-related reasons
 - Employee's position no longer exists due to economic or operating conditions related to COVID-19
 - Employer makes reasonable efforts to restore employee to same or equivalent position
 - Employer continues to make reasonable efforts to contact employee for one year if an equivalent position becomes available. The one-year period begins on the earlier of:
 - The date employee's leave ends
 - 12 weeks after the employee's leave began

E-FMLA: Employee Protections; Prohibited Acts; Enforcement

- Employer Prohibited Acts
 - Employers may not retaliate against an employee who takes or attempts to take E-FMLA or interfere with employee who files a complaint or other proceeding under E-FMLA. Retaliation or interference are violations of FMLA
 - Employees may be eligible for back wages, benefits, monetary losses, reinstatement and/or attorneys' fees
 - Employers can be subject to fines and penalties
- Employers may not deny employees E-FMLA if they have already used other types of available leave before to requesting E-FMLA leave

E-FMLA: Interaction with FMLA and E-PSL

- Employees who have already used leave time under regular FMLA will deduct that time from the 12-week leave allotment. The remaining amount is available under E-FMLA
 - Employees who have used 12 weeks of FMLA leave will not be able to take leave under E-FMLA
 - Employees may still use sick leave EPSLA if they haven't already used it
 - **Example:** Employee who used 2 weeks of regular FMLA leave starting in January 2020 has 10 remaining weeks of leave to use under the FMLA and E-FMLA collectively

COMMON PROVISIONS TO BOTH E-PSLA AND E-FMLA

SECTION 3: FFCRA: INFORMATION RELATIVE TO BOTH EMERGENCY PAID SICK LEAVE (E-PSL) AND EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (E-FMLA)

This section provides the requirements generally applicable to both Acts—E-PSLA and the E-FMLA. The specific details of each Act are listed in the previous sections

Both Acts: Employers Covered Under FFCRA

- Covered Employers: Both Acts of the FFCRA cover private employers with *fewer than 500 employees*
 - An employer's employee count includes the following full-time and part-time employees within the U.S. or any Territory or Possession of the U.S., regardless of when each employee was hired:
 - Employees on leave
 - Temporary employees who are jointly employed with another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll)
 - Day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship)
 - An employer's employee count *does not include* independent contractors²
 - Joint Employers:
 - Typically, a corporation, including its separate establishments or divisions, is considered to be a single employer for purposes of counting the 500 employees

² Be sure that you've correctly classified a worker as an independent contractor

- If two separate entities are considered joint employers under the Fair Labor Standards Act or integrated employers under the Family and Medical Leave Act, the employees of both must be counted toward the 500-employee threshold
- The number of employees is counted *at the time an employee's leave is to be taken*
- Small Business Exemption: Employers with *fewer than 50 employees* are not required to provide paid sick leave under the EPSLA or expanded family and medical leave under the E-FMLA due to school or place of care closures or childcare provider unavailability for COVID-19 related reasons to any employee *if* complying with either law would *jeopardize the viability of the business as a going concern*
 - A small business (under 50 employees) may claim this exemption if an authorized officer of the business has determined and documented that *at least one the three* following conditions is satisfied:
 - Providing paid sick leave under the EPSLA or expanded family and medical leave under the E-FMLA would result in the business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity
 - The absences of the employee(s) requesting paid sick leave under the EPSLA or expanded family and medical leave under the E-FMLA would entail a substantial risk to the financial health or operational capabilities of the small business because of the employee(s)' specialized skills, knowledge of the business, or responsibilities
 - There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services—which are necessary for the business to operate at a minimal capacity—provided by the employee(s) requesting leave
 - This exception does not apply if an employee requests leave for any reason other than a need to care for a child whose school or daycare is closed or whose childcare provider is unavailable

Applicable to Both Acts: Employees Exempted from Both Acts

The paid leave provisions of either Act do not apply to employees who fall into any of the following categories:

- **Healthcare providers**, which includes:
 - *Anyone employed at any of the following:*
 - 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 care provider
 - Any facility that performed laboratory or medical testing
 - Pharmacy
 - Similar institution, employer, or entity
 - Permanent or temporary institution, facility, location, or site where medical services are provided that are similar to the above institutions
 - *Anyone employee of any institution that contracts with any of the institutions described above to provide services, including those employed by any entity that:*
 - Provides medical services
 - Produces medical products
 - Produces any COVID-19-related equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments
 - *Anyone the highest state official determines is a healthcare provider*
 - **Emergency responders**, which includes anyone necessary for the transportation, care, healthcare, comfort, or nutrition of healthcare patients or for the response to COVID-19, including:

- Members of the military or national guard
- Law enforcement officers
- Correctional institution personnel
- Firefighters
- Emergency medical services personnel
- Physicians
- Nurses
- Public health personnel
- Emergency medical technicians
- Paramedics
- Emergency management personnel
- 911 operators
- Child welfare workers
- Service providers, public works personnel, and persons with skills/training in operating specialized equipment or other skills needed to provide aid in a declared emergency
- Anyone the highest state official determines is an emergency responder

Applicable to Both Acts: Teleworking Definition

Telework is work an employee performs remotely—either at home or at a location other than the normal place of work. **Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of FFCRA. Both Acts of the FFCRA only cover employees who cannot work at their normal place of business or cannot telework because of a qualifying reason.**

Applicable to Both Acts: Group Healthcare Plan Coverage and Contributions

Employer Requirements

- Employers must maintain any group healthcare plan for employees taking E-PSLA leave or E-FMLA leave on the same conditions as the coverage was maintained prior to the employee's leave
- Employers must provide the same benefits of any group healthcare plan for employees taking paid sick leave under the EPSLA or E-FMLA

- Employers who change their group health plans while employees are on paid sick leave under the E-PSLA or E-FMLA must provide employees on leave with the updated plan

Employee Requirements

- Employees are responsible for paying their portions of any healthcare plan premiums while on leave, regardless of whether premiums are raised or lowered during their leave
- Employees who choose not to retain coverage during leave may be reinstated on the same terms after returning from leave

Applicable to Both Acts: Notice Requirements

- All covered employers must provide notice to their employees notice of the FFCRA and its leave provisions and procedures using *any of the following methods*.
 - Posting the notice on its premises
 - Emailing or direct mailing all employees
 - Posting the notice on an employee information website
- A sample notice that meets the notice requirements of the FFCRA can be found here³

Applicable to Both Acts: Tax Credits for the Employer

Employers with fewer than 500 employees who are required under the FFCRA to pay qualified sick leave and/or expanded family and medical leave wages may claim certain refundable tax credits created by the FFCRA

- Eligible employers who pay qualifying emergency sick or emergency child care leave can retain an amount of the payroll taxes—which they would normally pay over to the IRS—equal to the amount of qualifying emergency pay under either Act of the FFCRA

³ https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WHI422_Non-Federal.pdf
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- Payroll taxes that can be retained include:
 - Withheld federal income taxes
 - Employee share of Social Security and Medicare taxes

Employer share of Social Security and Medicare taxes of those employees who received emergency pay

- If there are insufficient payroll taxes to cover the cost of qualified sick and child care leave paid to the employees, employers will be able to request an accelerated payment from the IRS.
 - The IRS expects to process these requests in two weeks or less
- Credit Amounts
 - There are two relevant credits:
 - A refundable *paid sick leave credit*, which covers up to 10 days of qualified paid sick leave wages paid, dollar-for-dollar, capped at:
 - \$511 per day per employee for reasons 1-3 under the EPSLA
 - \$200 per day per employee for reasons 4-6 under the E-FMLA
 - A refundable *family leave credit*, which covers up to 10 weeks of qualified expanded family leave wages paid, dollar-for-dollar, capped at \$200 per day per employee
 - Employers may pay their employees in excess of what they are entitled to under either Act, but cannot claim a tax credit for amounts paid in excess
- Employer Recordkeeping: Employers wishing to claim tax credits from the IRS should keep the following records for 4 years:
 - Documentation from an employee requesting leave as required under each reason of each Act

- Documentation showing how the employer determined the amount of leave time paid to employees that is eligible for a credit
- Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages
- Copies of any completed IRS Forms 7200 that the employer submitted to the IRS
- Copies of the completed IRS Forms 941 that the employer submitted to the IRS
- Other documents needed to support its request for credits under other IRS forms and instructions

Applicable to Both Acts: Closures, Furloughs, and Reduced Work Schedules

- If an employer's worksite was closed before April 1, 2020, employees are not entitled to paid sick leave or expanded family and medical leave
- If the employer closes the worksite on or after April 1, 2020, an employee is not entitled to E-PSLA or E-FMLA, even if the request was made before the closure
- If the worksite is closed while an employee is on E-PSLA or E-FMLA, the employer must pay for any paid sick leave or expanded family leave the employee used *before* the closure
- If an employer's business is open but furloughs employees on or after April 1, 2020, a furloughed employee is not eligible for E-PSLA or E-FMLA
- If an employer reduces an employee's scheduled hours, the employee is not entitled to take paid sick leave or expanded family and medical leave for the hours that were eliminated

Multi-employer (Collective Bargaining) Plans

An employer under a union contract may satisfy its obligations to provide expanded family and medical leave under the E-FMLA by making contributions to a multiemployer plan based on the hours of *paid* E-FMLA to which each employee is entitled

End of Employment/Termination of E-FMLA and E-PSL Rights

Employees have no right to receive reimbursements for unused paid sick leave under the EPSLA or unused expanded family and medical leave under the E-FMLA upon any of the following:

- Termination
- Resignation
- Retirement
- The expiration of both Acts on December 31, 2020

Reporting Wages Paid Under E-PSLA and E-FMLA

Employers are required to report to employees any wages paid under E-PSLA or E-FMLA. Employers must report separately the total amount of wages paid for:

- E-PSLA due to (labeled as “sick leave wages subject to the \$511 per day limit” or similar language):
 - Employee is subject to a federal, state, or local quarantine order related to COVID-19
 - A healthcare provider advised the employee to self-quarantine due to concerns related to COVID-19
 - Employee is experiencing COVID-19 symptoms and seeking a related medical diagnosis from a healthcare provider
- E-PSLA due to (labeled as “sick leave wages subject to the \$200 per day limit” or similar language):
 - Employee is caring for an individual subject to a federal, state, or local quarantine order related to COVID-19 *or* who has been advised to self-quarantine due to concerns related to COVID-19
 - Employee is caring for son or daughter whose school or place of care is closed (or the childcare provider is unavailable) due to COVID-19 precautions

- Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor
- E-FMLA (labeled as “emergency family leave wages” or similar language)

Employers should separately list these amounts in Box 14 of Form W-2 or on a separate statement. Self-employed individuals must report these amounts on Form 7202.

These amounts must also be included on Form W-2 in Boxes 1, 3 (up to the social security wage base), and 5 but are not listed separately from normal wages.