



# COVID-19 HR Solutions Updates & FAQ

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*This information has been provided as an informational resource for NFP clients and business partners and is not intended to and does not constitute legal advice. Its purpose is to provide general guidance, and the materials presented are not intended to address specific risk scenarios. Issues related to Coronavirus are changing at a rapid pace. The materials presented today may be outdated in the near term. Please consult your legal counsel for advice on your particular facts and circumstances.*

# Agenda

- I. Examples of how the COVID-19 FFCRA provisions interact with:
  - i. Emergency Paid Sick Leave (EPSLA) and Emergency Family and Medical Expanded Leave (EFMLEA)
  - ii. FFCRA and FMLA
  - iii. FFCRA and Company provided STD Plans
- II. Additional Resources
- III. Q&A





# How EPSLA & EFMLEA Interact



## Emergency Paid Sick Leave Act (EPSLA):

### Provisions:

- Employers with less than 500 employees.
- All employees are eligible.
- 80 hours of Paid Sick Leave (for qualifying reasons).

### Interaction with EFMLEA only relates to one reason under the EPSLA:

- The employee is caring for a child whose school or place of care is closed or whose regular child care provider is not available due to a public health emergency because of COVID-19 and the employee is unable to work/telework.
- Benefit under EPSL for this reason is 2/3rds of pay up to \$200 per day, capped at \$2,000 in total.

## Emergency Family and Medical Leave Expansion Act (EFMLEA):

### Provisions:

- Employers with less than 500 employees.
- Employees who have worked at least 30 days prior to the leave, (within the 60 days prior to the leave if rehired prior to 12/31/2020) are eligible.
- Initial 2 weeks of Emergency FMLEA is unpaid.
- Thereafter 2/3<sup>rds</sup> of an employee regular rate of pay up to \$200 per day, capped at \$10,000 over the remaining 10 week period.

### ONLY Reason for EFMLEA:

- The employee is caring for a child whose school or place of care is closed or whose regular child care provider is not available due to a public health emergency because of COVID-19 and the employee is unable to work/telework.

# FFCRA – How EPSLA & EFMLEA Interact

## Overlap of EPSLA and EFMLA

1. Both the EPSLA and the EFMLEA share a common reason for leave under the provisions:
  - The employee is caring for a child whose school or place of care is closed or whose regular child care provider is not available due to a public health emergency because of COVID-19 and the employee is unable to work/telework.
2. These Acts were written to work together to provide employees with income protection during the leave. One leave provides a paid leave for 80 hours, and the other provides unpaid leave for the first two weeks of the leave.
  - The EPLSA provides a paid benefit of 80 hours for the above reason at 2/3rds of an employees rate of pay up to \$200 per day up to \$2,000 in total.
  - The EFMLEA provides a total of 12 weeks leave; an initial period of two weeks of unpaid leave for the above reason.
  - Thereafter, partial pay of 2/3rds an employee's regular rate of pay up to \$200 per day capped at \$10,000 for the remaining 10 week period.

Note: The CARES Act clarified that for employees working part time or variable work schedules, this period under both Acts will coincide with the employee's regular schedule during the leave period:

- For example: If an employee works 6 days per week at 6 hours per day, they work a regular schedule of 36 hours per week. Therefore:
  - Their paid benefit under the EPSL would be 72 hours.
  - Their unpaid two week period under the EFMLEA would be two weeks (36 hours each week) = 72 hours total.

# FFCRA – How EPSLA & EFMLEA Interact

## Example #1

**Jeremy** has worked for ABC Company for 3 years. He is a single parent of a 5 year old little girl and his daughter's day care has been closed due to COVID-19. He has no other resources to care for his child and he is unable to work or telework because of the high demands of caring for his 5 year old daughter. ABC Company has 350 employees.

Interaction between EPSLA and EFMLEA - Example #1 - Jeremy											
Leave in Weeks (in Calendar 2020 - Ends 12/31/2020)											
1	2	3	4	5	6	7	8	9	10	11	12
2 Weeks of Unpaid Leave under the EFMLEA		Remaining EFMLEA is 10 weeks @ 2/3rds of Jeremy's regular rate of pay, up to \$200 per day up to \$10,000 for the duration of the Leave.									
80 hours of Paid Sick leave under the EPSLA @ 2/3rds pay up to \$200 per day, capped at \$2,000											

**Jeremy** would be entitled to benefits under both EFMLEA and the EPSLA since he:

1. Has been with his company for more than 30 days.
2. ABC Company has less than 500 employees.
3. His reason for leave meets the criteria for both leaves.

# FFCRA – How EPSLA & EFMLEA Interact

## Example #2

**Mary** has worked for XYZ Company for 20 days. She has 4 children of varying ages from 10 to 16. School has been closed for Mary's children due to COVID-19 and she has no other resources to care for her children. Mary is unable to work in the office because she needs to look after her children, and per position is one where she is not able to telework. XYZ Company has 425 employees.

Interaction between EPSLA and EFMLEA - Example #2 - Mary											
Leave in Weeks (in Calendar 2020 - Ends 12/31/2020)											
1	2	3	4	5	6	7	8	9	10	11	12
80 hours of Paid Sick leave under the EPSLA @ 2/3rds pay up to \$200 per day, capped at \$2,000											

**Mary** would only be eligible for benefits under the EPSLA since she:

1. Has only worked for XYZ Company for 20 days. (She does not meet the criteria for EFMLEA which is 30 days).
2. XYZ Company has less than 500 employees.
3. Her reason for leave meets the criteria for the Emergency Paid Sick Leave.



# FFCRA – How EPSLA & EFMLEA Interact

## Example #3

**Robert** has worked for TEST Company for 1 year. He has 2 children who are aged 13 and 15. School has been closed for Robert's children due to COVID-19 and he has no other resources to care for his children. **Robert** is unable to work or telework since his position requires him to be physically at work to perform his job. Robert regularly works 36 hours per week. TEST Company has 250 employees.

Interaction between EPSLA and EFMLEA - Example #3 - Robert											
Leave in Weeks (in Calendar 2020 - Ends 12/31/2020)											
1	2	3	4	5	6	7	8	9	10	11	12
2 Weeks of Unpaid Leave under the EFMLEA		EFMLEA (10 wks.) Pro-rated up to \$200 per day up to \$10,00 for the duration of the Leave.									
72 hours of Paid Sick leave under the EPSL @ a pro-rated amount											

**Robert** would be eligible for benefits under both EFMLEA and EPSLA since he:

1. Has worked for TEST Company for more than 30 days.
2. TEST Company has less than 500 employees.
3. His reason for leave meets the criteria for both the Emergency Paid Sick Leave and the Emergency Family and Medical Leave Expansion Act.



# How the FFCRA and FMLA Interact



# How FFCRA Interacts with FMLA

## FFCRA

The Emergency Paid Sick Leave (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA) under the FFCRA was put in place specifically to provide provisions if:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. **The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.**
3. **The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.**
4. **The employee is caring for an individual subject to a government order to quarantine or a recommendation by a health care provider to self-quarantine.**
5. The employee is caring for a child whose school or place of care is closed or whose regular child care provider is not available due to a public health emergency because of COVID-19. (Note: this reason is covered under both the EPSLA and the EFMLEA).

## FMLA

FMLA can be taken for the following reasons:

1. Birth and care of the employee's child, within one year of birth.
2. Placement with the employee of a child for adoption or foster care, within one year of the placement.
3. **Care of an immediate family member (spouse, child, parent) who has a serious health condition.**
4. **For the employee's own serious health condition that makes the employee unable to perform the essential functions of his or her job.**
5. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call or order to active duty in the U.S. National Guard or Reserves in support of a contingency operation.
6. Twenty-six workweeks of leave during a single 12-month period to care for a covered service-member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service-member (Military Caregiver Leave).

# How FFCRA Interacts with FMLA

## Eligibility and Provisions of EFMLA, EPSLA and FMLA:

1. The Emergency Family and Medical Leave Expansion Act eligibility and provisions:
  1. Covered employers are those who have less than 500 employees.
  2. The employee must have worked at least 30 days prior to the start of the leave, (or within 60 days prior to the leave request if rehired prior to 12/31/2020).
  3. Provides a mix of unpaid and paid leave for the 12 week period.
  4. Provides job protection (with some limitations for those under 25 employees).
2. The Emergency Paid Sick Leave Act eligibility and provisions:
  1. Covered employers are those who have less than 500 employees.
  2. There is no work requirement to be eligible for the leave.
  3. Provides up to 80 hours of paid leave for covered reasons.
  4. Provides job protection (with some limitations for those under 25 employees).
3. The FMLA eligibility:
  - Employers who have 50 or more employees within a 75 mile radius of the workplace.
  - Employees must have worked for 1 year and 1250 hours prior to the date of leave to be eligible for the leave.
  - Provides 12 weeks of unpaid leave.
  - Provides job protection for the duration of the leave (exception for key employees).

# How FFCRA Interacts with FMLA

## 1. Which employers are not covered employers under the FMLA but still need to comply with FFCRA?

- Employers that have less than 50 employees within a 75 mile radius of the workplace do not have to comply with FMLA, however they do need to comply with FFCRA.

## 2. Which employers are considered “covered employers” under both the FFCRA and the FMLA?

- Employers that have between 50 and 499 employees need to comply with both the FFCRA and the FMLA’s provisions.

## 3. Which employers are required to comply with the FMLA and not the FFCRA?

- Employers that have 500 employees or more need to comply with FMLA’s provisions, however are not considered “covered employers” under the FFCRA.



# How FFCRA Interacts with FMLA

## Example #1

**Ebony** has worked for “A” Company for 5 years. She is experiencing symptoms of COVID-19 and has been told by her doctor to stay home. Ebony is physically ill and she is unable to perform the normal functions of her job. She is not able to work or telework. “A” Company has 350 employees.

Interaction between FFCRA and FMLA - Example #1 Ebony											
Leave in Weeks (in Calendar 2020 - Ends 12/31/2020)											
1	2	3	4	5	6	7	8	9	10	11	12
80 hours of Paid Sick leave under the EPSL up to \$511 per day, capped at \$5,110											
Ebony would be entitled to 12 weeks of unpaid FMLA											

**Ebony** would be entitled to receive both EPSLA and FMLA since she:

1. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis, and she has been instructed by a health care professional to self-quarantine which qualifies her for 80 hours of Paid Sick Leave up to \$511 per day up to a cap of \$5,110 under the EPSLA.
2. Works for a company that is covered under the EPSL provisions (“A” Company has less than 500 employees.)
3. Also meets the criteria under FMLA:
  - a) She has worked more than 1 year and 1250 hours in the past 12 months.
  - b) She works for a covered employer (“A” Company has more than 50 employees within a 75 mile radius.)
  - c) Ebony has a serious health condition which is covered under FMLA.

# How FFCRA Interacts with FMLA

## Example #2

**LeRoy** has worked for “B” Company for 10 years. He needs to stay home and take care of his wife who has been diagnosed with COVID-19 and is seriously ill. His wife has been ordered by her doctor to stay home and self-quarantine. LeRoy is unable to work or telework because he needs to care for his wife. “B” Company has 200 employees.

Interaction between FFCRA and FMLA - Example #2 LeRoy											
Leave in Weeks (in Calendar 2020 - Ends 12/31/2020)											
1	2	3	4	5	6	7	8	9	10	11	12
80 hours of Paid Sick leave under the EPSL @ 2/3rds pay up to \$200 per day, capped at \$2,000											
LeRoy would be entitled to 12 weeks of unpaid FMLA											

**LeRoy** would be entitled to receive both EPSLA and FMLA since he:

1. Is caring for an individual subject to a government order to quarantine or a recommendation by a health care provider to self-quarantine, which qualifies him for 80 hours of EPSL at the rate of 2/3rds his pay up to \$200 per day, capped at \$2,000.
2. Works for a company that is covered under the EPSLA provisions (“B” Company has less than 500 employees.)
3. Also meets the criteria under FMLA:
  - a) He has worked more than 1 year and 1250 hours in the past 12 months.
  - b) He works for a covered employer (has more than 50 employees within a 75 mile radius.)
  - c) LeRoy is caring for an immediate family member (spouse) who has a serious health condition - covered under FMLA.

# How FFCRA Interacts with FMLA

## Example #3

**Rosemary** has worked for “C” Company for 20 years. Her child’s day care was closed on April 1<sup>st</sup> and she had no one available to watch her 6 year old daughter. She was unable to work or telework during this time. During this period, her daughter started showing signs of illness. Her pediatrician diagnosed her daughter with COVID-19 and Rosemary was told to self-quarantine her child until she was better. “C” Company has 475 employees.

**Rosemary** would be entitled to receive EFMLEA and EPSLA since she:

1. Was initially caring for a child whose school or place of care is closed or whose regular child care provider is not available due to a public health emergency due to COVID-19. She would be entitled to 12 weeks of leave under EFMLEA - two weeks of unpaid leave and then 2/3rds pay at the rate of \$200 per day up to \$10,000 for the remainder of the 10 weeks.
2. Has worked for her employer for more than 30 days so she is eligible under the EFMLEA.
3. Works for a company that is covered under both the EFMLEA the EPSLA provisions (“A” Company has less than 500 employees.)
4. Is taking leave for a covered reason (#1 above) under the EPSLA and is caring for an individual subject to a government order to quarantine or a recommendation by a health care provider to self-quarantine, both of which entitles her to 80 hours of leave at the rate of 2/3rds her pay up to \$200 per day, capped at \$2,000.
5. Rosemary is not entitled to FMLA since she is taking EFMLA.

# How FFCRA Interacts with FMLA

## Example #3

Note: **Rosemary's** EFMLEA will count toward her 12 week FMLA allotment for the remaining 12 months. If she uses the full 12 weeks of EFMLEA, Rosemary will not have any FMLA leave left for the remaining 12 month period.

Interaction between FFCRA and FMLA - Example #3 Rosemary											
Leave in Weeks (in Calendar 2020 - Ends 12/31/2020)											
1	2	3	4	5	6	7	8	9	10	11	12
80 hours of Paid Sick leave under the EPSL @ 2/3rds pay up to \$200 per day up to \$2,000 would run concurrently with EFMLEA											
2 weeks of Unpaid leave under the EFMLEA		10 weeks of EFMLEA at 2/3rds pay up to \$200 per day, capped at \$10,000 for the duration of the leave.									

# How FFCRA Interacts with FMLA

## Example #3A

Note: If **Rosemary** only takes a portion of the 12 week EFMLEA then she will still have FMLA leave to take later on within the 12 month period, (i.e. if she only takes 4 weeks under EFMLEA, she will have 8 weeks of FMLA to take within the 12 month period.

Interaction between FFCRA and FMLA - Example #3A Rosemary											
Leave in Weeks (in Calendar 2020 - Ends 12/31/2020)											
1	2	3	4	5	6	7	8	9	10	11	12
80 hours of Paid Sick leave under the EPSL @ 2/3 <sup>rds</sup> pay up to \$200 per day, capped at \$2,000 would run concurrently with EFMLEA											
2 weeks of Unpaid leave under the EFMLEA		2 weeks of EFMLEA at 2/3rds pay up to \$200 per day		Rosemary will still have 8 weeks of FMLA to take within the 12 month period from the start of the leave.							
Rosemary has asked her employer if she could use PTO to supplement her pay under the FFCRA. Her employer permitted her to use the time.											

**Rosemary** has asked her employer to permit her to use PTO to supplement the FFCRA benefits. In this instance, her employer agreed to allow Rosemary to use her PTO during the 4 week period.





# Short-Term Disability and COVID-19



# Short-Term Disability and COVID-19

## Short Term Disability (STD) programs:

- Employer-sponsored through an insurance carrier or by self-insuring.
- State Statutory Programs (CA, HI, NJ, NY, RI and PR)

Are STD benefits available if an employee is unable to work as a result of a quarantine, but the employee has not been diagnosed with COVID-19 or tested positive?

- It depends. Under a statutory program, typically an employee who is not ill would not qualify for STD benefits. Under an employer-sponsored plan, it would depend on how the employer's short-term disability policy defines "disability."

If an employee is quarantined and does test positive for COVID-19, is the employee eligible for STD benefits?

- It depends. While an employee may test positive for COVID-19, they may still be able to perform their job function remotely, and thus the employee would not be eligible for STD benefits. However, if the employee is unable to work and tested positive for COVID-19, it is likely that the employee may be eligible for STD benefits, depending on how "disability" is defined in the plan.

# Short-Term Disability and COVID-19

How are benefits structured if an employee is eligible for benefits under both the FFCRA and a STD program?

- Generally, if an employee is eligible to receive benefits under the FFCRA (federal program) or a state-mandated program, the STD carrier will consider the payment from another source as an offset or reduce any STD benefit that may be available. Once the FFCRA or state-mandated payment ceases or falls below the STD benefit amount, then the STD carrier will begin paying claim benefits or adjust the benefit payment at that time. The date of claim will remain at the original date the claim was filed. The duration of the STD claim will be based on the employee's individual need for leave as deemed by their physician's certification.

# Short-Term Disability and COVID-19

## Example

**Jane** has been diagnosed with COVID-19 by her doctor on 4/1/2020. Jane is very ill and she is not able to work or telework. Jane submits a doctor's note to her employer and is advised to file a Short Term Disability claim. Jane's employer has 340 employees, so she is eligible for the Emergency Paid Sick Leave under the FFCRA.

Interaction between FFCRA and FMLA and STD											
Leave in Weeks (in Calendar 2020 - Ends 12/31/2020)											
1	2	3	4	5	6	7	8	9	10	11	12
80 hours of Paid Sick leave under the EPSL up to \$511 per day up to \$5,110											
Jane would be entitled to up to 12 weeks of unpaid FMLA (If she meets all the criteria).											
STD Claim would be filed once the employee has a Dr. certification. Elimination period applies.	The employee would receive a modified STD payment taking into account the EPSL payment.	The employee would begin receiving the full STD benefit payment from the carrier after the EPSL payment ends. The duration of the disability period will be determined by the physician statement.									

**Jane** would be able to file a claim for STD as soon as she has a certification from her Doctor, however she would be still be subject to the normal elimination period (under your STD plan). The STD benefit payments would be offset by any payment that Jane is receiving through the EPSLA. Once the EPSL payments have ended, Jane will receive a full STD benefit through the STD carrier. The duration of the STD benefits would depend on Jane's physician certification.

**Please note: This is an example based on what NFP has learned through our carrier connections. Please check with your Company's STD carrier to confirm the provisions of your individual STD plan.**

# Short-Term Disability and COVID-19

## State disability insurance and responses to COVID-19:

### California

- Unable to work as a result of a diagnosis or exposure to COVID-19.
- Benefits are 60-70% of wages, depending on income, and range from \$50-\$1,300 per week.
- Waiver of one-week waiting period.

### New Jersey

- Revised Temporary Disability Leave Law to include serious health condition as an illness caused by epidemic or communicable disease, or efforts to prevent the spread of communicable disease.

### New York

- Applies to employers with less than 100 employees.
- Expanded definition of “disability” to include inability to perform duties as a result of quarantine order.

### Rhode Island

- Waived 7-day minimum time to be out of work before qualifying for Temporary Disability Insurance.
- Waived medical certification that someone is quarantined as a result of COVID-19.



# Short-Term Disability and COVID-19

## Carrier Insights:

Many STD carriers are considering whether to provide benefits in the following three circumstances as a result of COVID-19:

- Medical diagnosis without any symptoms (asymptomatic), but tested positive for COVID-19.
- Medical diagnosis with physical symptoms of COVID-19.
- High risk individuals - these individuals may not be experiencing symptoms, however they have underlying comorbidity factors that would put them at a high risk (cancer, diabetes, asthma, etc.).

STD carriers are also considering whether to provide STD benefits when an employee may be able to return to work but potentially may expose others to COVID-19.

- For example, if an employee has been diagnosed with COVID-19 but is asymptomatic, will returning that employee to work put others at risk? (i.e. essential workers working in close quarters, assembly lines, etc.) There is no guarantee that a carrier will deem this a disability, however many carriers are evaluating these types of issues on a case-by-case basis.

Employees who are at high risk are also given careful consideration:

- Some carriers are also taking an employee's medical history into account. If an employee has comorbidity issues (such as diabetes, respiratory illness, cancer, etc.) and are asymptomatic, the carrier may still consider approving the disability since the employee is at a higher risk.

# Short-Term Disability and COVID-19

## Take Aways:

### Have a discussion with your disability insurance carrier:

- Ask your carrier how they are handling COVID-19 related claims, especially given the three scenarios we previously addressed. Ask whether any typical requirements are waived or additional flexibility is permitted (i.e. type of medical documentation).

### Be sure to review whether state or local disability benefits are available and applicable:

- Check state and local legislation for any requirements under state disability and state paid and unpaid leave programs to ensure that employees are receiving the additional benefits that may be available to them due to COVID-19 related illnesses.

### Be cognizant of what medical certification or physician's statement is required:

- Generally, employees will still need to provide medication documentation to support receipt of STD benefits. Some carriers are permitting documentation provided as a result of telemedicine.



# Additional Resources



# Additional Resources

Paid Sick Leave: <https://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>

DOL Temporary Rule: <https://www.dol.gov/agencies/whd/ffcra>

DOL FAQ's: <https://www.dol.gov/agencies/whd/pandemic>

Employment and Labor:

<https://www.ncsl.org/research/labor-and-employment/covid-19-impact-on-employment-and-labor.aspx>

Benefit Compliance FAQ's:

<https://latest-insights.nfp.com/Corporate-Benefits/frequently-asked-questions-benefits-compliance-and-covid-19>

Department of Health and Human Services (HHS)

- [Coronavirus Disease 2019 \(COVID-19\) Updates](#)
- [HIPAA, Civil Rights and COVID-19](#)

Federal Resources - Centers for Disease Control and Prevention (CDC)

- [Coronavirus \(COVID-19\) Information and Resources](#)
- [Implementation of Mitigation Strategies for Communities With Local COVID-19 Transmission](#)
- [Information for Health Care Professionals Regarding COVID-19](#)
- [Resources for Businesses and Employers](#)
- [Travel Information](#)



# Q&A

