

KOCH'S KORNER – MARCH 19, 2020
From Koch Law Firm (KLF)^{1,2}

COVID-19 law – Emergency Paid Sick Leave and Emergency Family Medical Leave - what it means for you.

As you are aware, the president recently signed into law the First Coronavirus Response Act (FFCRA). FFCRA is **effective Thursday, April 2, 2020**. On March 20, 2020, the Treasury, IRS and Department of Labor announced a plan to implement Coronavirus-related paid leave for employees and tax credits for employers. See <https://content.govdelivery.com/accounts/USIRS/bulletins/2826044?reqfrom=share>.

Below is a short summary of some of the pertinent provisions of the FFCRA as we understand them, pending issuance of further guidance:

[Emergency Paid Sick Leave-\(EPSL\)](#)

[Emergency Family Medical Leave \(EFML\)](#)

[Tax Credits](#)

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Emergency Paid Sick Leave (EPSL)

- Employers with fewer than 500 employees must provide emergency paid sick leave (EPSL), regardless of how long they have been employed, if the employee is unable to work or telework because the employee:
 - Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
 - Has been advised by a healthcare provider to self-quarantine due to COVID-19;
 - is experiencing symptoms of COVID–19 and seeking a medical diagnosis;
 - Is caring for or assist an individual who is under self-quarantine or is subject to a quarantine order for COVID-19;
 - Is caring for a child if the school or place of care is closed or unavailable due to COVID-19; or
 - Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
- Full-time employees are entitled to up to 80 hours of EPSL.
- EPSL must not exceed—
 - \$511 per day and \$5,110 in the aggregate for any of the first reasons stated above;
 - 67% of the employee’s pay or \$200 per day and \$2,000 in the aggregate for the last three reasons stated above; or

- Employers may not require employees to use other forms of paid leave prior to the use of EPSL.
- The Department of Labor will provide a model notice for posting by employers.
- After the first workday (or portion thereof) an employee receives EPSL, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time
- Employers may not retaliate against employees for using EPSL.
- Penalties can be up to \$10,000 for violations.

Emergency Family & Medical Leave (EFML)

- Employees who have been employed for at least 30 days with an employer with fewer than 500 employees are eligible for up to 12 weeks of job-protected leave if the employee is unable to work (or telework) due to a need for leave to care for an employee's child under 18 years of age whose school or place of care has been closed, or the childcare provider is unavailable, or due to a public health emergency with respect to COVID-19.
- The first ten days of EFML may be unpaid, and an employer may allow, but not require, that some form of paid leave be substituted.
- An employee may elect to substitute any accrued vacation leave, personal leave, or medical or their EPSL during the initial 10-day period.
- After the first 10-day period, employees are entitled to paid leave at no less than 67% of the employee's usual pay for the normally scheduled work. Payments may not exceed \$200 per day, or \$10,000 in the aggregate.
- Employees are to give as much notice of the leave as practicable under the circumstances.
- Employees taking EFML are entitled to return to their prior job unless the employer employs fewer than 25 and such employer satisfies certain conditions.
- Employers are prohibited from discriminating against any employee who takes leave in accordance with this Act; or has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding.
- No part of the unused EFML is payable on termination of employment, etc.

Tax Credits.

- **Employers.** Employers are eligible for refundable tax credits against payroll taxes for the paid leave provided to employees under the FFCRA equal to 100% of the qualified EPSL and EFMLA leave wages paid for any calendar quarter, provided, that:
 - The EPSL credit may not exceed \$200 per day (\$511 in the case of any day any portion of which is paid sick time for any of the first three reasons) for up to 10 days of EPSL;
 - The EFML tax credit is equal to 100% of EFML wages paid not to exceed, \$200 per day or \$10,000 in the aggregate for each employee; and
 - Certain health care costs are also eligible for the credit.

- Self-employed. Self-employed individuals are eligible to receive refundable tax credits:
 - For sick leave as if they were an employee equal to their average daily self-employment income (the net earnings from self-employment for the taxable year, divided by 260) for up to 10 days provided that credits not to exceed the lesser of \$200 per day (\$511 in the case of the first three reasons), or 67% (100% for sick leave in the case of the first three reasons) of average daily self-employment income; or
 - Equal to the product of (A) the number of days (not to exceed 50) during the taxable year that the individual is unable to perform services for the stated reasons, multiplied by (B) the lesser of (i) 67 percent of the average daily self-employment income of the individual for the taxable year, or (ii) \$200.

NOTE:

- Paid leave under the FFCRA is in addition to any paid sick leave benefit currently provided to employees; no change of benefits should be made to existing policies.
- Exemption authority:
 - The Department of Labor may exempt businesses with fewer than 50 employees from the FFCRA when the imposition of the requirements would jeopardize the viability of the business as a going concern.
 - The Department of Labor may exempt certain health care providers or emergency responders.
- Certain health care providers or emergency responders may exclude employees from the rules.

Healthcare Coverage.

- Elimination of any cost sharing for diagnostic testing for COVID-19 or related office visit.

KLF can help. Please contact us for assistance regarding your legal questions and concerns whether they involve COVID-19 or other issues, we can help. We are fully automated. We can advise you over the phone or through video conferencing. Documents can be emailed or mailed to you.

Sincerely,

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