

MANAGING COMPLIANCE AS A SCHOOL DISTRICT

FFCRA, Unemployment, Retirement
Plans, and more.



MANAGING COMPLIANCE AS A SCHOOL DISTRICT: FFCRA, UNEMPLOYMENT, RETIREMENT PLANS, AND MORE

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AGENDA

- Families First Coronavirus Response Act (FFCRA)
 - Emergency Paid Sick Leave Act (EPSLA)
 - Emergency Family & Medical Leave Expansion Act (EFMLEA)
- Layoff and Stay in Place Issues
- EEOC Guidance re: ADA
- Unemployment Compensation
- **Questions**

This presentation and the contents herein do not constitute legal advice. Please seek the advice of counsel for any FFCRA related implementation guidance or strategy.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

In response to the recent COVID-19 (coronavirus) pandemic, the United States Congress passes a bill designed to provide economic relief to those affected by the virus.

Key Dates:

- Passed by the House of Representatives (second modified version) – March 14, 2020
- Passed by the Senate – March 18, 2020
- Signed by President Trump – March 18, 2020
- Effective April 2, 2020
- Expires December 31, 2020

** EPSLA & EFMLEA apply to ALL private employers with less than 500 employees and ALL public employers

** Health care provider and first responder employers may exempt employees.

DOL may exempt all health care provider and first responder employers.

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

EMERGENCY PAID SICK LEAVE ACT (EPSLA):

***This provision of the Act provides paid sick leave for the following reasons:**

- Employee is subject to quarantine for COVID-19 (full pay)
- Employee is advised to self-quarantine due to concerns related to COVID-19 (full pay)
- Employee has symptoms related to COVID-19 and is seeking a diagnosis (full pay)
- Employee is caring for an individual subject to quarantine or advised to quarantine (2/3 pay)
- Employee is caring for a child if the school or place of care is closed due to COVID-19 precautions (2/3 pay)
- Employee is experiencing any other similar condition as defined by HHS or DOL (2/3 pay) – NOT DEFINED YET

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

EMERGENCY PAID SICK LEAVE ACT (EPSLA):

*Key Provisions

- For an employee to be eligible for benefits, there is no minimum length of service requirement.
- Full-time employees are entitled to 80 hours of pay and part-time employees are entitled to pay for the typical hours they work in a two week period.
- Paid at the employee's regular rate of pay or minimum wage, whichever is greater
- Pay shall not exceed \$511/day and \$5,110 in aggregate for employee leave and \$200/day and \$2,000 in aggregate for caring for others.
- Employees covered under a collective bargaining agreement are guaranteed this benefit as well.

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

EMERGENCY PAID SICK LEAVE ACT (EPSLA):

*Key Provisions

- Employers must provide EPSLA time in addition to any other paid time off that is already offered.
- Employers are prohibited from changing current leave policies by reducing the amount of leave ordinarily provided.
- In addition, employers are prohibited from requiring employees to take or exhaust employer-paid leave before taking EPSLA time.
- NOTICE: Employers are required to post a notice regarding the EPSLA.

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

EMERGENCY FAMILY & MEDICAL LEAVE EXPANSION ACT (EFMLEA):

***This provision of the Act EXPANDS current FMLA and provides paid FMLA for the following reasons:**

- “Qualifying need related to a public health emergency” = an employee is unable to work or telework due to a need to care for a child under 18 due to school or care provider closures related to COVID-19.
- Please note that it does NOT provide paid leave for any other FMLA qualifying reasons and does NOT provide paid leave for COVID-19 related care or quarantines.

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

EMERGENCY FAMILY & MEDICAL LEAVE EXPANSION ACT (EFMLEA):

*Key Provisions

- First two weeks of leave are unpaid, but employees can use available sick, PTO or EPSLA time
- Remaining ten weeks are paid at not less than 2/3 of the employee's usual pay
- Pay is not to exceed \$200/day or \$10,000 in aggregate
- Employee must be with the employer for at least 30 days

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

EMERGENCY FAMILY & MEDICAL LEAVE EXPANSION ACT (EFMLEA):

*Key Provisions

- Small employers with 50 or less employees could receive an exemption from the Department of Labor if the imposition of this expanded FMLA would jeopardize the viability of the business.
- Employers with less than 25 employees will not be required to restore employees that take this leave to their previous position if it has been eliminated due to economic considerations during the leave.

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

TAX CREDITS FOR EPSLA AND EFMLEA PAID LEAVE

*Key Provisions

- Tax credits will be available for most employers providing the required paid leave. Credits will be capped and provided against Section 3111(a) taxes – employer Social Security taxes.
- Public employers will not be eligible for the tax credit.
- Employers should consult with their tax professional for details on these credits.

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

FAQ: Is paid sick leave or expanded family and medical leave intermittently while teleworking?

Yes, if the District allows it and the employee is unable to telework the normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act or because the employee needs to care for a child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons,

District and Employee must agree and the intermittent leave can be taken on any schedule agreed upon.

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

FAQ: If the District reduces scheduled hours for employees, are those employees able to use FFCRA leave for the hours the employees are no longer scheduled to work?

No. If the District reduces employee work hours because less work is available, employees may not use paid sick leave or expanded family and medical leave for the hours that employees are no longer scheduled to work.

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT – FFCRA 2020

FAQ: Are District employees able to take paid sick leave or EFMLEA to care for children once school is closed for summer

No. Paid sick leave and emergency family and medical leave are not available for this qualifying reason if the school or child care provider is closed for summer vacation, or any other reason that is not related to COVID-19.

However, the employee may be able to take leave if his or her child's care provider during the summer—a camp or other programs in which the employee's child is enrolled—is closed or unavailable for a COVID-19 related reason. **This would not apply for school year employees because these employees do not need leave from work... there is no work performed in the summer.

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COBRA – LAYOFFS AND SHUTDOWNS

NO SUBSIDIES AT THIS POINT

- If employers lay-off or “furlough” (which is a leave of absence) employees, it is a reduction in hours that would require an offer of COBRA once coverage is lost.
- Many carriers are allowing employers to keep laid off employees in active status for a certain amount of time.
- Check with carriers/stop loss carriers!

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ADA

PANDEMIC PREPAREDNESS IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT

- The EEOC document provides updated information about what employers can do and the types of inquiries that can be made during the COVID-19 pandemic under the ADA.
- The bulletin can be found here:
https://www.eeoc.gov/facts/pandemic_flu.html

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UNEMPLOYMENT COMPENSATION DURING COVID-19: FEDERAL LAW

Expanded Unemployment Benefits – CARES Act

- Provides additional \$600-\$800/week in benefits for COVID-19 related unemployment.
 - Not pro-rated based on FTE
 - through July 31, 2020
- Additional 13 weeks of benefits (from 26 up to 39).
- Federal funds pledged for 50% of UC costs, and full cost of the additional \$600/week and additional 13 weeks

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UNEMPLOYMENT COMPENSATION DURING COVID-19: STATE LAW

2020 Wisconsin Act 185:

- Eliminates one week waiting period for UC benefits

Governor Evers' Order, Emergency Order #7

- Employee not allowed to work due to symptoms of COVID-19, or not given clear directions on return to work – considered “available for work”
- Waives the work search requirements

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UC FUNDING – REIMBURSEMENT EMPLOYERS

- Includes public school districts
- State benefits paid out of administrative fund (until exhausted)
- Federal benefits:
 - Full cost of additional weekly benefit (\$600) and additional 13 weeks
 - 50% of Costs from March 13, 2020 to December 31, 2020 for regular benefits

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UNEMPLOYMENT COMPENSATION

Other traditional requirements still apply:

- Cannot refuse to accept suitable employment offered by the employer
- Employee inability to work due to illness, quarantine/isolation requirements, does not qualify one for UC
- Employee unwillingness to work due to fear of exposure, regardless of underlying conditions, not a basis for UC
- Employees who quit or are terminated for misconduct or substantial fault not protected

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PANDEMIC UNEMPLOYMENT

- Separate unemployment compensation program
- For self-employed, independent contractors, employees with limited work history (who can't work due to COVID-19)

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ADDITIONAL PANDEMIC-RELATED PROVISIONS

- 403(b) Plan Restatement Deadline extended from March 31, 2020 to June 30, 2020 (July 31, 2020 for pre-approved benefit plan)
- Suspension of Wis. Stat. 103.13 until the end of the public health emergency declared by executive order 72.

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UC – MYTHS AND MISCONCEPTIONS

- Layoffs v. Furloughs – no material distinction in the UC context
- Secondary employment – can create UC eligibility even if District employment continues (may get notice)
- ADA does not allow an employee to choose to remain on UC instead of reporting to work

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UC – SPECIAL CIRCUMSTANCES

Instances of employees receiving UC while being paid:

- May be based on concurrent or previous employment – 5 quarter lookback
- Advise employees that (a) all wages paid are reported to UC; (b) inappropriately paid UC benefits subject to reimbursement; and (c) benefits knowingly obtained by concealing information subjects one to criminal penalties

Reasonable Assurances – still applicable to school year employees

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QUESTIONS?

Thank you for attending!