



COVID-19: County Guidance

Emergency Family and Medical Leave Expansion Act

Summary

The Emergency Family and Medical Leave Expansion Act (EFMLEA) requires all employers with fewer than 500 employees to provide up to 12 weeks of job-protected leave to employees who are unable to work due to the need to care for a child whose school or child care provider is unavailable because of a public health emergency related to COVID-19. While the first 10 days of such leave are unpaid, the remaining 10 weeks must be paid at two-thirds of the employee's regular rate of pay. Leave paid by an employer under the EFMLEA is reimbursed through refundable tax credits.

What employers are covered?

This Act applies to businesses with fewer than 500 employees. **This includes counties.** Companies with fewer than 50 employees may obtain an exemption from the Secretary of Labor if compliance would jeopardize their viability, but it is unclear if counties will be eligible for such an exemption.

What employees are entitled to leave under the EFMLEA?

Only employees who have been employed by the employer for at least 30 calendar days are eligible. However, an employer of a health care provider or emergency responder may exclude such employees from receiving leave under this Act.

- ➔ **First responder exemption:** the Act does not define health care providers or emergency responders, but we expect that to include police, fire and EMS. It could also include 911 dispatchers and jail staff. We will provide more guidance on that question once regulations are written. Under the terms of the Act, health care/emergency responder employees are not automatically exempt, but the employer can elect to exempt them from the leave provisions.

What situations qualify for leave?

The Act provides for paid leave if an employee is unable to work (including telework) due to the need to care for a child under 18 if the child's school or place of care has been closed, or the child care provider is not available, because of a Coronavirus-related public health emergency.

What are the leave benefits under the EFMLEA?

- An employee is entitled to twelve weeks of leave. The first 10 days may be unpaid; the employee may substitute available paid leave (e.g., vacation, personal, or sick leave, including leave provided under the EPSLA), but the employer may not require such substitution.
- For the remainder of the covered leave, the employee is entitled to receive two-thirds of his or her regular rate of pay, up to \$200 per day and \$10,000 in the aggregate for any



employee, for the number of hours he or she otherwise would normally be scheduled to work.

Is EFMLEA leave job protected?

In general, yes.

- ➔ However, there is an exception for companies with fewer than 25 employees if the employee's position no longer exists due to economic conditions or operational changes caused by COVID-19. In that event, the employer must make reasonable efforts to restore the employee to a comparable position with equivalent terms and conditions of employment, and if those efforts fail, the employer must make reasonable efforts for one year after the employee's 12-week leave period or qualifying need ends, whichever is earlier, to contact the employee if an equivalent position becomes available.

How is this leave funded?

Employers initially pay for the leave, but some employers will be able to recover some or all of the expense through refundable tax credits.

- ➔ The legislation excludes counties from the tax credit provision and does not otherwise address whether or how they will be reimbursed. This may be addressed via subsequent legislation or regulations, but at this time **we are unsure how or if counties will be reimbursed by the federal government.**