Emergency Family & Medical Leave Expansion Act (EFMLEA)

When is it effective?   4/1/2020 – 12/31/2020

What is it?                   Extends the FMLA to a parent whose son or daughter under the age of 18 and school or daycare is closed due to COVID-19.

Emergency Paid Sick Leave Act – (EPSLA)

When is it effective?   4/1/2020-12/31/2020

What is it?                   Extends to private employers and nonprofits with fewer than 500 employees and public employers. Various leave reasons are listed below. Employer will require medical proof.

Employer’s Responsibility:          Employers should post (or email if employees working remotely) in a conspicuous place a notice of the requirements described in the EPSLA (see attached)

Tax Information:

* Employers are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns.
* Under guidance that will be released this week, eligible employers who pay qualifying leave under EFMLEA or EPSLAwill be able to retain an amount of the payroll taxes equal to the amount they paid, rather than deposit them with the IRS.
* The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.
* If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced next week.

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| EFMLE | EPSLA |
| Eligible Employee:  An employee who has worked for the employer for at least 30 days | Eligible Employee:  Eligible immediately |
| Covered Employer:  Private employers with less than 500 employees, nonprofits, and public sector employers | Covered Employer:  Private employers with less than 500 employees, nonprofits, & public sector employers. |
| Leave Reason:  Employee cannot work or telework due to caring for a son or daughter under age 18 due to closure of school or childcare because of COVID-19 | Leave Reason:   1. Quarantine or isolation order 2. Employee self quarantine due to Concerns related to COVID-19 3. Employee has symptoms or COVID-19 & is seeking a medical diagnosis 4. Employee is caring for an individual under quarantine or who was advise to self- quarantine 5. Employee is caring for a child due to school/childcare closure 6. “Substantially similar condition” |
| Length of Leave:  Up to 12 weeks, assuming the employee has not already exhausted any FMLA leave time | Length of Leave:  This act authorizes paid sick time for certain types of COVID-19 related leave |
| Pay Entitlement:  First 10 days unpaid & remainder of leave (up to 10 weeks) at employee’s normal schedule | Pay Entitlement:  Pay starts immediately |
| Pay Calculation:  2/3 of regular pay up to a maximum of $200 a day or $10,000 aggregate | Pay Calculation:  For leave reasons 1-3 -100% of their regular rate or the applicable minimum wage, whichever is higher, up to $511 per day and $5,110 in the aggregate (over a two-week period)  For leave reasons 4-6: 2/3 of regular pay up to a maximum of $200 a day or $10,000 aggregate |
| Small Business Exemption:  Possible exemption from EFMLEA for employers with fewer than 50 employees if business can show compliance would “jeopardize the viability of the business as a going concern” (waiting for DOL guidance) | Small Business Exemption:  Possible exemption from child-care related paid sick leave (reason #5)for employers with fewer than 50 employees if business can show compliance would “jeopardize the viability of the business as a going concern” (waiting for DOL guidance) |