



THE CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT AND THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT: PROVISIONS PROVIDING ECONOMIC PROTECTION FOR WORKERS

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Congress has passed two major pieces of legislation to address the coronavirus crisis gripping our country: The Families First Coronavirus Response Act (“FFCRA”) and the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). Both laws contain important protections for workers affected by the current crisis, in the form of **paid leave benefits**, enhanced **unemployment benefits** and **cash payouts**, which we summarize below.

Note: This guidance is as of April 28, 2020. Text in ***bold and italics*** is new since the last revision, and has been added to provide further clarification.

1. Paid Leave Under FFCRA: The Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA): These two laws, passed as part of the FFCRA, require employers to provide *paid leave* to employees who cannot work for COVID-19-related reasons. As described below, they provide different, but somewhat complementary benefits. Both, however:

- Apply to *private sector* employers with *fewer than 500 employees*, and *all state and local government agencies of whatever size*.
 - The EPSLA also applies to the Federal government; the EFMLEA is available to some Federal employees, but not to most members of the civil service.
- Became effective on April 1, 2020.
- Apply while the employer is open for business. If the employer closed down before April 1 or closes down once the employee is on paid leave, the employee’s recourse is to seek unemployment compensation under the programs described below.
- Permit employers to take a credit against payroll taxes worth 100% of the amount they pay in required benefits (“qualified leave wages”) *plus* the cost of maintaining the employee’s health insurance during the period the employee is on paid leave and the Medicare tax on the qualified leave wages (through Dec. 31, 2020). (Source: Secs. 7001(c) and 7003(c) of FFCRA)

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- Nothing prohibits employers from paying more than the law requires, particularly if the wages are set by a collective bargaining agreement. However, the credit does *not* apply to any amounts the employer pays over what the law requires.
- Give employers in multiemployer bargaining units the option of satisfying their obligations by paying into a multiemployer benefit plan *if* the plan provides employees with the required benefits.
- Permit either the Department of Labor or the employer to deny these benefits to health care workers or emergency responders.
- Require the employer to notify its workers about these rights, either by physically posting a notice at conspicuous places in the workplace, by emailing or directly mailing it to employees, or by posting it via internal or external websites. DOL has prepared a notice, which is available here:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

a. Emergency Paid Sick Leave Act (“EPSLA”): This Act requires employers to provide employees with 2 weeks of paid leave if they have to be out of work for various COVID-19 related reasons. The benefits are available to *all employees*, regardless of how long they have worked for the employer. Employers are required to pay, for up to 80 hours (pro-rated for part-time):

- Regular wages, capped at \$511/day (\$5110 maximum) for employees unable to work because:
 - The employee is subject to a public COVID-19-related quarantine, isolation, or stay-at-home order – including when the employee is a member of a category of employees the public authority had advised to stay at home;
 - A health care provider has advised the employee to self-quarantine; or
 - The employee is experiencing COVID-19 symptoms and seeking a diagnosis.
- 2/3 of regular wages, capped at \$200/day (\$2000 maximum) for employees unable to work because the employee is:
 - Caring for an individual subject to a public quarantine or isolation order or who has been advised to self-quarantine;
 - Caring for a son or daughter if the school or childcare facility is closed or childcare provider is unavailable; or
 - Experiencing similar conditions, as specified by HHS.

(Source: FFCRA Secs. 5102-5111; 29 C.F.R. § 826.10 and 826.20)

b. Emergency Family and Medical Leave Expansion Act (“EFMLEA”): Congress expanded the Family and Medical Leave Act (“FMLA”) to provide paid leave to employees who cannot work because they need to care for their children whose schools are closed or childcare providers are unavailable due to the COVID-19 crisis. These benefits are available to employees who have been employed for *30 days or more* by the employer from which they are seeking the leave. The first

two weeks are unpaid, although – unless they have used the pay for other reasons -- employees are expected to finance that time with the paid leave available under the EPSLA. Otherwise, they may use any accrued paid leave available from their employer. The employee is then entitled to an additional 10 weeks of paid leave. Under the EFMLEA:

- Paid leave is 2/3 of regular wages, capped at \$200/day (\$10,000 maximum).
- Although this Act expands the reasons for which employees are entitled to leave under the FMLA and, for the first time, requires employers to pay for a portion of that leave, it does not expand the overall amount of FMLA time. In other words, employees who have already used some of their FMLA leave will have that amount of time deducted from the 12 weeks provided under the EFMLEA.
- DOL regulations exempt employers with 50 or fewer employees from the childcare leave requirements in both the EPSLA and EFMLEA if providing the benefits “would jeopardize the viability of the small business as a going concern.” A small employer qualifies for this exemption if “an authorized officer of the business” determines that:
 - Paying the benefits would cause the business’s expenses to exceed its available revenue and cause it to cease operating at minimal capacity;
 - The employees seeking the leave have specialized skills, knowledge of the business, or responsibilities the absence of which would cause a substantial risk to the business’ ability to function; or
 - Without the employee(s), there would be insufficient staff for the small business to operate at a minimal capacity.
- An employer claiming this exemption must document its decision, but is not to send any documentation to DOL.

(Source: FFCRA Secs. 3103-3105, amending FMLA Secs. 102 and 104, 29 U.S.C. §§ 2612 and 2614; 29 C.F.R. §§ 826.23, 826.40(b))

2. Enhanced Unemployment Compensation. The CARES Act provides states with the opportunity to expand their unemployment insurance (“UI”) programs in four ways to: (1) expand access to UI benefits; (2) increase the amount of UI payments; (3) extend the duration of UI benefits; and (4) eliminate waiting periods. These changes only go into effect if a state enters an agreement with the federal government agreeing to certain terms. However, because the federal government will pay for 100% of the CARE Act’s changes, we anticipate that most, if not all, states will offer these expanded benefits.

The CARES Act provides the following:

a. For workers who qualify for regular UI benefits:

- All weekly UI benefits will be increased by \$600 beginning with weeks of employment that start after the state enters into its agreement with the Federal government and

running through weeks of employment that end before July 31, after which the regular UI benefit continues.

- State-law mandated “waiting periods” are waived.
- Benefits can be received for an additional 13 weeks beyond the period that state laws typically allow. Most states provide 26 weeks of unemployment benefits,¹ which are often extended by another 13 weeks; this adds 13 weeks to the state’s total.
- These enhancements are for unemployment for any reason – not just COVID-19.

(Source: CARES Act Secs. 2104, 2105 and 2107)

b. For workers who typically would not qualify for regular UI benefits – including individuals who have exhausted their benefits; like apprentice, are without a wage history; are independent contractors, self-employed, or sole proprietors; or otherwise usually would not qualify for UI benefits:

- Benefits available for up to 39 weeks of unemployment beginning after January 27 and ending before December 31, 2020 (excluding any weeks of benefits the worker received under regular UI).
- The weekly benefit amount is the regular UI under state law plus – for weeks of unemployment beginning March 27 and ending before July 31, 2020 -- \$600.
- An individual may receive these benefits if available for work, but unemployed or unavailable to work because:
 - the individual’s place of employment is closed as a direct result of COVID-19;
 - the individual has been diagnosed with COVID-19, has symptoms of COVID-19 for which the individual is seeking a diagnosis, or has come into contact with someone who has tested positive and has been advised by a healthcare professional to self-quarantine;
 - a member of the individual’s household has been diagnosed with COVID-19;
 - the individual is providing care for a family member or a member of individual’s household who has been diagnosed with COVID-19;
 - a child or other person in the household for whom the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19, and such school or facility being open is required for the individual to work;
 - the individual is unable to reach their place of employment because of a COVID-19 related quarantine, **stay-at-home or shelter-in-place** order or an order restricting travel;
 - the individual is unable to reach their place of employment because they have been advised to self-quarantine by a health-care provider;
 - the individual was scheduled to commence employment but is unable to reach the job or no longer has the job because of COVID-19;

¹ All but eight (8) states offer 26 weeks of UI benefits. Arkansas, Alabama, Florida, Idaho, Kansas, Missouri, and South Carolina offer less than 26 weeks of regular UI benefits. Georgia expanded to 26 weeks on March 26, 2020.

- the individual has become the breadwinner or major support for their household because the head of household has died as a result of COVID-19;
- the individual has to quit their job as direct result of COVID-19;
- the individual's place of employment is closed as a result of COVID-19;
- the individual works as an independent contractor and is unemployed, partially unemployed or unable to work because the COVID-19 emergency has limited their ability to perform their customary work activities and has therefore forced them to suspend those activities.

(Source: CARES Act Secs. 2102 and 2104; DOL Unemployment Insurance Program Letter No. 16-20, Attachment I: Pandemic Unemployment Assistance Implementing and Operating Instructions; ***DOL Unemployment Insurance Program Letter No. 16-20 Change 1, Attachment I: Questions and Answers: Pandemic Unemployment Assistance Program***)

c. For workers covered by Railroad Unemployment Insurance:

- Waives the 7-day waiting period for railroad unemployment benefit claims for claims filed after the law's enactment and through December 31, 2020.
- Increases the maximum bi-weekly railroad unemployment benefit to \$1200 (from current \$780).
- Extends railroad extended benefits (which apply after initial 130 day benefit period), to 130 days.

(Source: Secs. 2112-2114 of the CARES Act)

3. Direct Cash Payments under the CARES Act: The CARES Act also provides for direct payments – or “recovery rebates” – of \$1,200 per individual (\$2,400 per couple filing jointly), plus \$500 for each qualifying child, for individuals earning up to \$75,000 (or \$150,000 per couple). The payments gradually phase out above those income levels, with no payments to individuals making \$99,000 or more, or to couples making \$198,000 or more.

This benefit is available to all U.S. residents or citizens with incomes below the cap, even those who have no income or whose income comes entirely from non-taxable benefit programs, such as Social Security or veterans disability benefits, as long as no other taxpayer is claiming them as a dependent. The IRS has announced that most recipients will not have to take any action to receive their checks, as the agency will use either the 2019 tax return, if filed, or the 2018 tax return to identify the recipient, and where it has the information, will deposit the money directly into the recipients' bank accounts. The IRS has also announced plans to set up a web-based portal for individuals to provide their banking information online. The IRS will be mailing checks to individuals for whom the agency does not have this information.

(Source: Sec. 2201 of CARES Act; ***more information is available at*** <https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know>)

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