



# LEGAL UPDATE

## Schneider Smeltz Spieth Bell LLP

### FAMILIES FIRST CORONAVIRUS RESPONSE ACT – UPDATE (3/20/2020)

On March 18, 2020 President Trump signed the Families First Coronavirus Response Act (“FFCRA”). The FFCRA goes into effect within 15 days and no later than April 2, 2020.

The final version of the FFCRA grants paid leave similar to what the House of Representatives passed on March 14 for employees at employers **with less than 500 employees** (“Covered Employers”) under the Emergency Paid Sick Leave Act (“EPSLA”) and the Emergency Family and Medical Leave Expansion Act (“EFMLA”). Both the EPSLA and EFMLA are effective through December 31, 2020.

#### Emergency Paid Sick Leave Act

The EPSLA grants paid sick leave to employees to the extent that an employee is unable to work **or work remotely** due to the following circumstances:

1. The employee is subject to a Federal, State or Local quarantine or isolation related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who is subject to an order to isolate or quarantine by a Federal, State or Local government or has been advised to self-quarantine by a health care provider due to concerns related to COVID-19;
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions;
6. The employee 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.

The total amount of paid sick leave for an eligible employee under the EPSLA depends on whether an eligible employee is full time or part time. Full time employees are entitled to 80 hours of paid sick leave while part time employees are entitled to the number of hours the part time employee works on average over a 2-week period. The paid sick time for eligible employees is available regardless of how long the employee has been employed by a Covered Employer.

The EPSLA provides for paid sick leave at the regular rate of pay (capped at a maximum of \$511 per day and \$5,110 in the aggregate) for where an employee takes sick leave for reasons 1, 2 or 3 listed above. Paid sick leave is reduced to 2/3 the regular rate of pay (capped at \$200 per day and \$2,000 in the aggregate) where employees take sick leave for reasons 4, 5 or 6 listed above.

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**Emergency Family and Medical Leave Expansion Act**

The EFMLA provides up to twelve weeks of protected leave for employees who are unable to work or telework due to a need to care for a child under the age of 18 whose school or child care provider closed or is otherwise unavailable due to COVID-19. This leave is available immediately to employees who have worked for a Covered Employer for at least 30 days prior to the start of the leave. Of the 12 weeks provided under the EFMLA, 10 weeks are paid with the initial 10 days unpaid provided however that an employee can substitute accrued paid time off during those initial 10 days. The pay required under the EFMLA is set at 2/3 the regular rate of pay subject to a cap of \$200 per day and \$10,000 in the aggregate.

**What Employers Need to Do**

Covered Employers need to comply with the EFMLA and EPSLA when they go into effect. Additionally, employers cannot discriminate against employees that take EPSLA leave and must retain the position for employees that take EFMLA leave unless the employer has less than 25 employees and meets certain criteria.

Covered Employers also need to post notices prepared or approved by the Secretary of Labor relating to the EPSLA in their workplaces. Please note that existing notice requirements and postings already exist under the FMLA and employers covered by the Family and Medical Leave Act must continue to comply with the FMLA. Employers should also track time for leave granted under the FFCRA both for the purposes of applying for tax credits available under the FFCRA and compliance purposes generally.

The FFCRA also granted the Secretary of Labor authority to issue regulations exempting businesses that employ less than 50 employees from both the EPSLA and EFMLA where complying with the EPSLA and EFMLA would affect jeopardize a business as a going concern. While this may offer an escape from the EPSLA and/or EFMLA to interested and eligible employers, there is no guarantee that the process to receive or qualify for an exemption will be less than the cost of complying with the EPSLA and EFMLA.

Please note that the above is a non-exhaustive overview of the EPSLA and EFMLA and not intended as a substitute for legal advice. If you have any questions concerning the EPSLA or EFMLA, please contact Michael W. Schauer.