

Paid FMLA Emergency Federal Leave Expansion Act (EFMLEA)

Effective 4/1/20, Sunset 12/31/20

Which employers must comply:

	Private Sector	Public Agency
<50 employees	Some employers may be determined to be exempt.*	Required compliance for all public agencies
50-499 employees	Required compliance	
500+ employees	Not required – can consider implementing some or all of provisions as the “right thing to do”	

*An employer with <50 employees must be determined to be exempt from EFMLEA arising from the need to care for a child under the age of 18 where the school or day care provider is closed to COVID-19. These employers may be eligible for exemption if:

- Paid leave would cause business expenses and financial obligations to exceed revenue
- The absence of FFCRA-requesting workers will entail a “substantial risk” to the company’s well-being or ability to operate due to “specialized skills, knowledge or the business or responsibilities”
- There are not enough qualified workers available to do the work performed by FFCRA-requesting employees and work is necessary for business to run at “minimal capacity”

*NOTE: Employers that are **Health Care Providers and/or Emergency Responders** may exclude employees from eligibility to take leave for caring for a child where the school or day care provider is closed due to COVID-19.*

Things to Know:

All non-exempt employers or agencies must pay employees unable to work or telework due to caring for child (under age of 18) where school/day care closed due to COVID-19. NOTE: Special substantiation required for children over 14. This includes 12 weeks of job-protected level. The first 10 days are unpaid, the next 10 weeks are paid at 2/3 rate of pay up to a maximum.

Eligible employees	Employees that have been employed for at least 30 calendar days.
Leave for self	No
Leave for family care	Yes, for childcare only
Leave period covered	12 weeks (not an extension of traditional FMLA)
Leave paid	First two weeks unpaid/10 weeks paid
Rate of pay	2/3 of regular rate of pay
Maximum pay	\$200/day up to \$10,000 max
Job protection	Yes. EXCEPTION Employers with less than 25 employees.
Discrimination forbidden	Yes
Notification required	Yes
Enforcement by DOL	Yes. Temporary delay first 30 days after effective date
Tax credits available	100% of payroll tax credit for required paid sick leave wages plus certain healthcare expenses of the employer. Additionally, private sector employers may obtain a tax credit for wage replacement.

As of the issuance of the Temporary Rule by the Department of Labor, the exemption for small employers is to be a case by case determination. Further, there is no means of submission of an exemption request or documentation to support a claim of exemption as of the issuance of the Temporary Rule.