

COVID Webinar #3

Questions & Answers

EFMLEA - Can two parents take paid sick leave or expanded family and medical leave simultaneously to care for a child whose school or place of care is closed due to COVID-19 related reasons?

Paid Sick Leave or Expanded Family and Medical Leave may be taken to care for your child only when you need to and are unable to work or telework as a result of providing care. Generally, you do not need to take such leave if a co-parent, co-guardian, or your usual childcare provider is available to provide the care your child needs. An employer could likely push back and inform the employees that only one spouse is needed at a given time to provide care.

EFMLEA - Will EFMLEA be available when school is out for the summer?

EFMLEA is available to employees caring for a child under age 18 due to a school or day care provider closure or the unavailability of a childcare provider. When school is no longer in session for the summer, much will depend upon the Stay at Home, Quarantine and Isolation orders in place at that time. If restrictions are still in place, and childcare is not open or available, EFMLEA could still be used. Keep in mind that justification is required when requesting leave to care for children older than 14 during daylight hours.

EFMLEA + EPSLA - Can an employee choose to take 12 weeks of EFMLEA first and then take 2 weeks of EPSLA so the employee will have access to 14 weeks of leave to care for a child due to school closing?

Yes, assuming the employee meets all eligibility criteria for the 14 weeks. Under the EFMLEA, the employer cannot require that an employee substitute paid leave for the first two weeks; however the employee does have the option to substitute and take the first two weeks unpaid, or substitute employer paid leave, and save their EPSLA leave for a later date.

FFCRA - If an employee decides to self-quarantine for two weeks because they believe they have COVID symptoms, but does not seek treatment advice of a healthcare provider, can they be paid for those two weeks under the FFCRA?

Generally No. If you test positive or become ill with COVID-19 symptoms, you may take paid sick leave under the FFCRA only to seek a medical diagnosis or if a health care provider otherwise advises you to self-quarantine. You may not take paid sick leave if you decide to self-quarantine for an illness without treatment or advice of a healthcare provider.

EFMLEA - If I am an employer, may I require my employee to take paid leave he or she may have under my existing paid leave policy concurrently with expanded family and medical leave under the EFMLEA?

Not for PSL, but after the first two work weeks of EFMLEA, you may require that your employee take EFMLEA and existing leave that, under your policies, would be available

to the employee concurrently. This would likely include personal leave or paid time off, but not medical or sick leave if your employee (or a covered family member) is not ill.

EFMLEA - Can employee's share of medical insurance premiums be deducted from Paid Sick Leave or Paid EFMLEA?

Yes, these payments are considered wages and all normal payroll deductions should continue to be taken from EFMLEA and PSL.

UNEMPLOYMENT - If a company shuts down due to COVID and employees file for unemployment individually, does the employer still need to submit the mass layoff spreadsheet to the State?

It is best for the employer to send a spreadsheet listing all employees who have been laid off, as it may get loaded and processed quicker than each employee filing individual claims. States have asked employers to submit this spreadsheet on or before employees' last day of work. But if employees are filing individually, the employer should not send a spreadsheet to the State.

RECORD KEEPING - What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave and how long do I need to retain them.

For Paid Sick Leave due to employee or family member COVID-related illness:

- The name of the employee requesting leave;
- The date(s) for which leave is requested;
- The reason for leave
- A statement that the employee is unable to work (including remotely) due to the Qualifying Purpose.

- If your employee requests leave to self-quarantine or to care for an individual who is self-quarantining, the name of the health care provider who gave advice. A doctor's slip is not required.

For PSL or EFMLEA to care for child whose school or place of care is closed, or childcare provider is unavailable, you may must also document:

- The name and age of the child being cared for;
- The name of the school, place of care, or childcare provider that has closed or become unavailable; and
- A statement from the employee that no other suitable person is available to care for the child.
- If care is needed during daylight hours for a child older than 14, a statement that special circumstances exist requiring the employee to provide care

If you intend to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, you should retain appropriate documentation in your records. And retain for at least 4 years with other tax records.

PPP - Can payments to independent contractors or sole proprietors be used in the "payroll costs"?

No. The SBA clarified that payments made to independent contractors or sole proprietors cannot be used in the "payroll costs," because they may apply for their own loans.

PPP – What about employees who make more than \$100,000 per year? Are they included?

Yes, but only up to \$100,000, as prorated during the eight-week period following receipt of the loan funds. For example, if an employee makes \$150,000 on an annual basis, you may only count \$100,000 toward your loan eligibility amount and similarly can only use the PPP loan funds on a maximum of \$100,000 per employee, as prorated during the eight-week period.

PPP – During what time period can the loan funds be used?

PPP loan funds may be used in the eight-week period following receipt of the loan funds.

PPP – What can the PPP Loans be used for?

They can be used for payroll costs, group health care benefits, vacation, family, sick, or other leaves, retirement contributions, state and local taxes, rent, utilities, and interest on other debt obligations.

EIDL – What documents do I need in-advance in order to file for an EIDL loan?

- **Business Information:** Prior 3 Years Tax Returns, Organizational Documents, Owners Operating Agreement (if applicable), Corporate By-Laws or LLC Documentation from the Secretary of State.
- **Accounting Information:** Payroll Reports, 2019 W-3 and W-2's. Monthly Rent Invoice or Copy of the lease, Copy of utility bills, gross receipts/sales

EIDL – How do I calculate the maximum loan request

Total “compensation” paid to employees for the one year period ending in the most recent payroll paid in 2020 just prior to the loan application divided by 12, multiplied by 2.5 (however, no more than \$100,000 of compensation for a single employee for the 12 month period can be included in the maximum loan request).

Are any companies participating planning to introduce antibody testing within their workforce?

We're not aware of any companies considering the antibody testing and there is a great deal of caution about the accuracy of antibody tests as they've not yet been approved by the FDA. The tests can only be administered in a healthcare setting, and the FDA is requiring all companies that sell these tests without authorization to alert buyers that results from their antibody tests do not confirm or rule out infection from SARS-COV-2 and that further testing should be done to diagnose COVID-19.

The government is currently validating antibody tests and will roll out a national testing plan around antibody tests in the coming weeks.

I know in normal situations, there are certain questions you aren't allowed to ask your employees for discrimination reasons. Are COVID concerns superseding that? My understanding was that you're not normally supposed to ask questions about if they are married or have a family for example.

There are definite restrictions on asking family-related questions to applicants or those you are considering hiring, but once an employee is hired, you can ask questions about family members that would not be viewed as discrimination.

You should refrain from asking medical-related questions about employees or their families, such as questions about other medical conditions like Diabetes, Auto-Immune, etc., that could cause assumptions about high risk for COVID and actions based on those assumptions.

Should we have increased concerns about discrimination lawsuits if both parents work for us and we grant leave for one parent and not the other to care for kids?

The best course of action is to communicate openly and be as flexible as possible supporting the needs of your employees. If both parents work for the same company, talk with them together to offer options, and let them determine what works best to take

time to care for their children, i.e. each work intermittently certain days or hours of the day, or one takes EFMLEA first and then the other could take time if needed, etc. To avoid discrimination claims, be sure you are following your policies as well as related employment laws. We're glad to talk through specific situations with you as they arise to come up with the best solutions.

If we have employees that are deemed essential, are we required to provide the cloth masks that the CDC recommends, or are employees required to provide them?

The CDC recommends masks in public settings where other social distancing measures are difficult to maintain. It is advisable for employers in these situations to make masks available to employees.

Before an employer can require an employee to use face masks as PPE, the employer must:

- perform a hazard assessment;
- consider other alternative options to protect employees;
- identify and provide appropriate PPE for employees;
- train employees in the use and care of PPE;
- train employees how to clean/maintain PPE, including replacing worn or damaged PPE

Companies requiring employees to wear masks as PPE should provide, pay for, and conduct this analysis. If masks are not required by the employer, but the employee wears a mask voluntarily, the employer is not required to pay or reimburse.

Are there any requirements for materials that they should be made from? And where can you get masks?

To preserve the supply of N95 and surgical masks for health-care workers treating patients who have contracted COVID-19, cloth masks are recommended.

Research has shown that masks made out of thicker materials, like quilter's cotton, sweatshirt fabric and towels, fared better in blocking particles. Hold it up to a bright light, and if you see light between the fibers of the mask, it will not be a good filter.

Masks with elastic bands that stretch around the ears can cause soreness - cloth or string ties are most comfortable for long-term use.

It's very difficult to get masks quickly due to the high volume needed for medical care across the country. Some possible resources:

- Custom Ink appears to have available – ship within a week and 3-day delivery
- Amazon Homemade has some available that ship within a week but may be more expensive for large quantities.
- Etsy is another source for a small supply
- Check websites such as Nextdoor or Facebook Marketplace for local resources who may be making facemasks.

How do we pay employees that have applied for STD? Do they still get Emergency Paid Sick Leave? We have not been notified if it has been approved or not. Do we pay until we know?

If an employee has applied for your company's short-term disability benefits for a COVID related illness, they can elect the first two weeks as Paid Sick Leave and then start Short-Term Disability. However, you cannot require employees to take ESPL in place of STD or take STD in place of ESPL if they qualify for both. They could not take them simultaneously if it would result in paying more than 100% of their normal wages.

What is the best resource for getting information regarding the stimulus check distribution?

The following website provides a timeline for depositing and mailing stimulus checks:

<https://heavy.com/news/2020/04/covid-19-stimulus-check-tracker-status/>

**Resource for Extensive FFCRA Q&A on Department of
Labor website**

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>