

COVID-19 Emergency Expansion Edition

FMLA: SIMPLIFIED

EFMLEA guidelines are in effect from
April 1, 2020 through December 31, 2020.

*Know
This!*

EFMLEA (Emergency Family Medical
Leave Expansion Act)

*is in addition to **FMLA***

(Nothing about FMLA is changing, there are
only temporary additions to the Act.)

This handout covers federal EFMLEA...states may alter so an ER must (1) consult counsel, and (2) consult state FMLA laws. Benefits cannot be less than the federal, however.

Information covered in this webinar series is a compilation of generally published information by the Department of Labor and other public agencies regulating employee benefit issues. It is not legal advice, and should not be construed as legal advice. If legal advice or other professional assistance is or may be required with regard to any issues referenced in the webinar, the services of a competent legal professional should be sought. This flyer is intended to communicate discussion points from the webinar and is not intended to communicate ERISA in its entirety.

What are FMLA benefits?

- Job-protected, unpaid leave
- Maintenance of health benefits
- A right to return to the same position or an equivalent position

What is different with EFMLEA?

- First two weeks are **unpaid** leave with remaining 10 weeks at **2/3** the EE regular rate of pay
- No protection from layoffs

How long is FMLA leave?

12 weeks

taken **intermittently or continuously**

How is EFMLEA different?

- It provides only a new **“leave reason”**, but does not expand total number of weeks
- If an EE has already used 12 weeks of leave under FMLA, they are **unable** to use EFMLEA leave

EMFLEA Small Business Exemption:

Fewer than 50 employees AND the employee leave is to care for a child whose place of care or school is closed, but only if the business viability is jeopardized.

Employers may also exclude EE who are either health care providers or emergency responders.

Who is eligible for FMLA leave?

Leave is generally available when the following three conditions are met:

| FMLA | EFMLEA |
|--|--|
| 50 or more employees | Less than 500 employees |
| Employed for 12 months prior to leave, 1,250 hour of service | Employed at least 30 calendar days |
| 50 employees in 75 miles | Includes not-for-profit employers and public agencies, regardless of number of employees |

Counting Employees (Employer makes count when employee leave is initiated.)

| |
|--|
| Works within the US, US territories, or D.C. |
| Both full-time and part-time |
| Those working and on leave |
| Temporary employees who are jointly employed |
| Day laborers supplied by a temporary agency |

What counts as an FMLA qualifying event?

- Birth or care of a **newborn child**
- Placement of a child for **foster care or adoption** & care for the same
- A **Serious Health Condition** of the employee’s family
- A **Serious Health Condition** of the employee

An EFMLEA qualifying event

A child whose school or **place of care is closed** (or child care provider is unavailable) due to COVID-19 related reasons.

What **MUST** an employee do?

- Provide **advance notice** of leave
- Submit **certification** to substantiate the leave
- Provide a **certification of fitness** to return to work

| EE requesting leave MUST provide <i>orally or in writing</i> |
|--|
| Name of EE |
| Date of leave |
| Reason for leave |
| Statement of inability to work due to reason |

All existing certification requirements remain in effect for existing reasons.

What **MAY** an employer do?

- **Delay restoring** the employee back to their position without receipt of **certification of fitness** to return to work
- Move the employee to a **same-pay position** to better accommodate intermittent leave
- Establish the **time frame** to calculate leave; this may be on a calendar year, anniversary year, or moving date

| ER MUST document |
|---|
| Name of EE |
| Date of leave |
| Reason for leave |
| Statement of inability to work due to reason |
| Name of child being cared for |
| Name of school, place of care, or child care provider that has closed or become unavailable |
| Statement from EE that no other suitable person is available to care for child |

Remember!

Private Sector ERs are eligible for **tax credits** for paid EFMLEA!

Also!

The DOL encourages ER and EE to collaborate on **flexible** work schedules and **intermittent** EFMLEA is permitted.

Helpful Links

[The DOL website](#)

[FAQ's about FFCRA](#)

Three Commonly Used FMLA Forms:

[WH-381: Notice of Rights and Responsibilities](#)

[WH-382: FMLA Designation Notice](#)

[WH-380-E: Certification of Health Care Provider for Employee](#)