

What Is Life After Coronavirus?

Regulation Updates: Understanding Employer Compliance and Safety

Renee West, Rea & Associates
Darlene Finzer, Rea & Associates
Cheryl Coblentz, Rea & Associates

Wednesday, April 1, 2020



Rea & associates
CPAs and business consultants

Agenda

- FFCRA, EFMLEA & EPSLA Updates
- CARES Act - New
- SharedWork Ohio Program
- Unemployment
- DOL Workplace Posters – FFCRA April 1st, 2020
 - Required Policy Notifications – FFCRA & EFMLEA
- Client Resources
 - Rea's Employer Resource Page

Families First Coronavirus Response Act

- The Families First Coronavirus Response Act (FFCRA) includes 2 main provisions:
 - 1) Emergency Family & Medical Leave Expansion Act (EFMLEA)
 - 2) Emergency Paid Sick Leave Act (EPSLA) effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

EFMLEA - Review

- All employers with fewer than 500 employees must comply. The concentration of 50 or more employees within a 75-mile radius (applicable under other provisions of the FMLA) does not apply to the EFMLEA.
- Employees are eligible for relief under the EFMLEA after working for the employer for at least 30 calendar days.

EFMLEA - Review

- Leave is available when an employee is unable to work or telework due to the need to care for a son or daughter under the age of 18 or when the child's school or day care is closed due to the coronavirus.
- The initial 10 days of EFMLEA leave is unpaid. After 10 days, the remainder of the leave is paid.

EFMLEA - Review

- The employee can elect to run his or her existing paid leave (like vacation days or PTO) concurrently with the 10-day unpaid leave period, but the employer cannot require this.
- If an employee qualifies for both EFMLEA and Emergency Paid Sick Leave (see below), the employee may use the Emergency Paid Sick Leave at the same time as the first 10 days of EFMLEA leave that would normally be unpaid.

EFMLEA - Review

- After the 10-day unpaid leave period expires, employee will be paid two-thirds of his or her regular rate under the Fair Labor Standards Act, multiplied by the number of hours the employee would normally work.
 - If this is unpredictable, the employer should look at the prior six-month period to determine the average number of hours worked per week prior to the leave.
- Paid leave under the EFMLEA will be a maximum of \$200 per day and \$10,000 in total for the duration of the leave. After the \$10,000 maximum is reached, the remainder of the leave, up to 12 weeks, is unpaid.

Emergency Paid Sick Leave Act (EPSLA)

• When is an employee entitled to Emergency Paid Sick Leave?

- Employee cannot work or telework because of one of the following:
- Employee is subject to a federal, state, or local quarantine or isolation order;
- Employee has been advised by a health care provider to self-quarantine;
- Employee is experiencing symptoms of coronavirus and is seeking a medical diagnosis;
- Employee is caring for a person subject to a federal, state, or local quarantine or isolation order or who has been advised by a health care provider to self-quarantine;
- Employee is caring for a son or daughter of the employee whose school or day care is closed

Emergency Paid Sick Leave Act (EPSLA)

- **Can an employee use Emergency Paid Sick Leave to cover the first 10 days of EFMLEA leave that is unpaid?**
 - If an employee qualifies for both EFMLEA and Emergency Paid Sick Leave, the employee may use the Emergency Paid Sick Leave at the same time as the first 10 days of the EFMLEA leave that would normally be unpaid.

Emergency Paid Sick Leave Act (EPSLA)

- **How much compensation will an employee be paid during Emergency Paid Sick Leave?**

- Leave taken for the following reasons **will be paid at the employee's regular rate of pay subject to a limit of \$511 per day and \$5,110 total:**
 - Employee is subject to a federal, state, or local quarantine or isolation order;
 - Employee has been advised by a health care provider to self-quarantine; or
 - Employee is experiencing symptoms of coronavirus and is seeking a medical diagnosis.
- Leave taken for the following reasons will be paid at two-thirds of the employee's

Emergency Paid Sick Leave Act (EPSLA)

- Leave taken for the following reasons **will be paid at two-thirds of the employee's regular rate of pay subject to a limit of \$200 per day and \$2,000 total:**
 - The employee is caring for a person who is subject to a federal, state, or local quarantine or isolation order or who has been advised by a health care provider to self-quarantine;
 - The employee is caring for a son or daughter of the employee whose school or day care is closed; or

EFMLEA - Paid Sick Leave

- If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees *would jeopardize the viability of my business as a going concern*, how do I take apply for exemption?
- Document why your business with fewer than 50 employees meets the criteria set forth. Further guidance from government in more detail in forthcoming regulations

EFMLEA - Paid Sick Leave

- If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees *would jeopardize the viability of my business as a going concern*, how do I take apply for exemption?
- Document why your business with fewer than 50 employees meets the criteria set forth. Further guidance from government in more detail in forthcoming regulations

EFMLEA - Paid Sick Leave

- May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?
 - No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons.
 - **Total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.**

EFMLEA - Paid Sick Leave

- Is all leave under the FMLA now paid leave?
 - **No.** The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days.
 - This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

EFMLEA - Paid Sick Leave

- Are the paid sick leave and expanded family and medical leave requirements retroactive?
 - No
- What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?
 - You must provide to your employer documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information.

EFMLEA - Paid Sick Leave

- May I collect unemployment insurance benefits for time in which I receive pay for paid sick leave and/or expanded family and medical leave?
 - No. If your employer provides you paid sick leave or expanded family and medical leave, you are not eligible for unemployment insurance. However, each State has its own unique set of rules; and [DOL recently clarified additional flexibility to the States](#) (UIPL 20-10) to extend partial unemployment benefits to workers whose hours or pay have been reduced.

FFCRA - Paid Leave Updates

- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- Please continue to visit this site for available employer payroll credit for these paid leaves.

CARES (Coronavirus Aid, Relief and Economic Security) Act

- Aka: The Stimulus Package
- Signed into law on Friday, March 27.
- Program passed as a \$2.2 trillion program. Impact will be closer to \$7 trillion based on direct relief, grants, and government-supported loans.

CARES Act

- Covers the entire gamut in terms of provisions – from food assistance to the arts to student loans and even internet access in rural areas.
- Family stimulus checks
 - \$1,200 for individuals; \$2,400 for a married couple; \$500 for each child under age 17.
 - Based on income
 - Checks are nontaxable

CARES Act

- \$367 billion loan program for small businesses
 - SBA Payroll Protection Program (PPP)
- \$500 billion to the U.S. Exchange Stabilization Fund to provide loans and loan-guarantee funds for hardest-hit industries and those for maintaining national security.

CARES Act

- Refundable payroll tax credits
- Ability to defer payments of payroll taxes
- Changes to Net Operating Loss provisions
- Changes to certain depreciation provisions

CARES Act

- “Federal Pandemic Unemployment Compensation”
- Massive \$250 billion boost to unemployment insurance
 - Individuals can apply immediately, so eliminates waiting period
 - Expands eligibility to those who typically would not qualify for unemployment benefits: self-employed workers, independent contractors, those who haven’t hit the minimum hours for benefits.
 - Offers workers an additional \$600 a week, in addition to what state unemployment programs pay.
 - Will extend benefits an additional 13 weeks to allow individuals to be eligible for a total of 39 weeks.

SharedWork Ohio Program

jfs.ohio.gov/ouio/SharedWorkOhio

- Potential updates to program with new Stimulus Bill
- Regular unemployment is capped at 50% of an employee's gross pay. SharedWork program is designed for employers that would like to decrease employee hours by only 10-50%.
- **This allows compensation to employees for hours not worked that would normally not be eligible for unemployment.**

SharedWork Ohio Program

- Employers complete online application
- Clients should be prepared to answer:
 - All units & employees within unit
 - Start Date needs added to application. The website indicates ODJFS will try to accommodate the start date, but reserves the right to take 30 days to review the process.
 - Application questions whether the company will continue to offer health and retirement benefits. (This could change based on insurance waiving normal process with new regulations).

SharedWork Ohio Program

- The company designates a unit, which can be a subsection of the employee's workforce, greater than 2 people. One company may have multiple units. All employees in the unit will need to have the same % reduction in hours.
- After the application is approved and employees are working reduced hours, the employer will need to login and report hours by employee by Sunday evening for the previous week.
- After the hours are entered, the employee will need to go in and certify the information (This is instead of filing their normal weekly benefit information)

SharedWork Ohio Program

- If plan is approved, the employee is given a SW determination and an unemployment determination.
- If an employee has an open unemployment claim and then the employers starts a SW plan. The open claim can be applied to the SW plan.

NOTE:

- The last we heard, this was still an option to provide partial benefits. However ODJFS isn't providing timeframes on when plans will be approved other than to say they are working through them due to volume.
- SW plans can be modified after approval.

SharedWork Ohio Program

- If plan is approved, the employee is given a SW determination and an unemployment determination.
- If an employee has an open unemployment claim and then the employers starts a SW plan. The open claim can be applied to the SW plan.

NOTE:

- As of 3/31 ODJFS has committed to reviewing all applications within one week of receipt.
- SW plans can be modified after approval.

DOL Workplace Posters - April 1st

- Requirements for posting & remote work notification
 - Posted in a conspicuous space
 - Remote workers – send new policies via email or add to company intranet for employee reference.
 - Share with all current employees, no need to share with employees recently laid off or prospective employees.
 - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

DOL Workplace Posters - April 1st

- Employers are required to post new DOL workplace posters on April 1, 2020.
 - Two new posters are:
 - FFCRA – ***Non-Federal employees***
 - https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
 - FFCRA – ***Federal employees***
 - https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Federal.pdf

Rea's Covid-19 Resource Page

- <https://www.reacpa.com/service/covid-19-resource-center/human-resources-compliance-safety-resources/>
- Additional Resources - Unemployment
 - <http://jfs.ohio.gov/ouio/CoronavirusAndUI.stm>

Rea's HR Consulting Services

- **Current HR Consulting Services:**
 - Consultations regarding staffing reductions to ensure compliance
 - Consultations regarding unemployment and best practices
 - New policy templates for FMLA, EFMLEA from recent legislative updates
 - Employee Handbook review and updates to reflect new policy administration and ensure compliance with leaves, EEOC, department of labor, staff reductions, crisis & emergency policies, ADA, Workers Comp.

What Is Life After Coronavirus?

Understanding Employer Compliance And Safety

Questions?



Renee West, SHRM-SCP
senior manager
HR consulting services
Rea & Associates
330.308.6818
renee.west@reacpa.com



Darlene Finzer, CPA, CSA, QKA
Principal
Director of Later Life Planning Services
Rea & Associates
330.308.6867
darlene.finzer@reacpa.com



Cheryl Coblentz, CPA
Senior manager
Rea & Associates
234. 249.3463
cheryl.coblentz@reacpa.com