Jessica L. Roe
Attorney

612-351-8305 (D)
612-810-1807 (C)
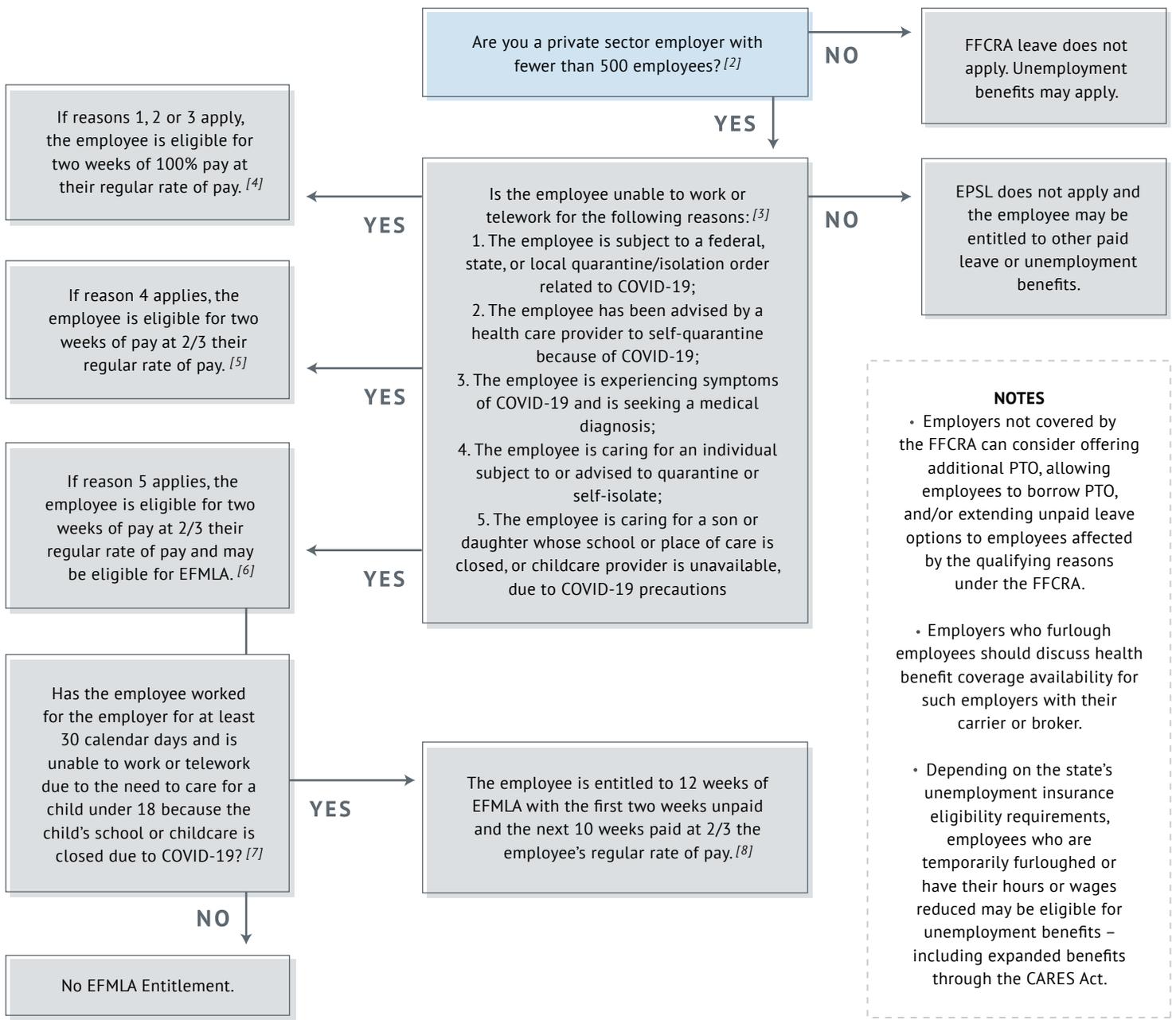jroe@roelawgroup.com

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

Effective Wednesday, April 1, 2020 - December 31, 2020 [1]

- Emergency Paid Sick Leave (EPSL) is to care for their own or someone else's coronavirus-related issues.
- Emergency Family Medical Leave (EFMLA) is paid leave that will be provided when parents can't work because their children's schools or child care services are closed due to the pandemic. The child must be younger than 18.

Are you a private sector employer with fewer than 500 employees? [2]

NO → FFCRA leave does not apply. Unemployment benefits may apply.

YES ↓

Is the employee unable to work or telework for the following reasons: [3]
1. The employee is subject to a federal, state, or local quarantine/isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine because of COVID-19;
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. The employee is caring for an individual subject to or advised to quarantine or self-isolate;
5. The employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions

NO → EPSL does not apply and the employee may be entitled to other paid leave or unemployment benefits.

YES → If reasons 1, 2 or 3 apply, the employee is eligible for two weeks of 100% pay at their regular rate of pay. [4]

YES → If reason 4 applies, the employee is eligible for two weeks of pay at 2/3 their regular rate of pay. [5]

YES → If reason 5 applies, the employee is eligible for two weeks of pay at 2/3 their regular rate of pay and may be eligible for EFMLA. [6]

Has the employee worked for the employer for at least 30 calendar days and is unable to work or telework due to the need to care for a child under 18 because the child's school or childcare is closed due to COVID-19? [7]

YES → The employee is entitled to 12 weeks of EFMLA with the first two weeks unpaid and the next 10 weeks paid at 2/3 the employee's regular rate of pay. [8]

NO ↓

No EFMLA Entitlement.

NOTES

- Employers not covered by the FFCRA can consider offering additional PTO, allowing employees to borrow PTO, and/or extending unpaid leave options to employees affected by the qualifying reasons under the FFCRA.

- Employers who furlough employees should discuss health benefit coverage availability for such employers with their carrier or broker.

- Depending on the state's unemployment insurance eligibility requirements, employees who are temporarily furloughed or have their hours or wages reduced may be eligible for unemployment benefits – including expanded benefits through the CARES Act.

Please refer to reference notes on the following page for additional details.

Reference Notes

[1] The new paid leave requirements go into effect on April 1, 2020 and will be in effect through December 31, 2020. There is no retroactive effect. Employees who are provided paid leave prior to April 1 will still be eligible for the full paid leave beginning April 1 if they are out on leave for a qualifying reason. In addition, employers may not qualify for the refundable tax credit for paid leave provided prior to April 1.

[2] Generally, to determine whether over or under 500, an employer would count the following: temporary employees who are jointly employed by you and another employer (regardless of whether the jointly- employed employees are maintained on only your or another employer's payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are not considered employees for purposes of the 500-employee threshold. If under 50 employees, employers can consider claiming the small-business exemption from complying with the EPSL and EFMLA if they determine that one of the following apply:

 · The provision of paid sick leave or expanded FMLA would cause the business's expenses and financial obligations to exceed available business revenues and cause the business to cease operating at a minimal capacity.
 · The absence of the employee or employees requesting paid sick leave or expanded FMLA would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business or responsibilities.
 · There are no sufficient workers who are able, willing and qualified to perform, when and where needed, the labor or services of the employee or employees requesting paid sick leave or expanded FMLA, and the labor or services are needed for the small business to operate at minimal capacity.

These are fact specific decisions and if you have any questions, please seek legal counsel.

[3] These leaves are not available to employees whose workplaces are closed due to a federal, state, or local shelter-in-place or stay-at-home orders, or due to business slowdowns. There is no access to leave if the employee is not working. In other words, furloughed or employees who are laid off are not entitled to EPSL or EFMLA. If employees are returned to work, prior to December 31, 2020, the employee will be entitled to EPSL and EFMLA through the last day of 2020.

[4] EPSL for reasons 1, 2 and 3 is paid at 100% of employee's regular rate of pay. Capped at $511/day (or $5,110 in total). If an employee uses the full two weeks of EPSL and is still unable to work, the employee may be covered under regular FMLA or other disability-related laws.

[5] EPSL for reason for 4 is paid at 2/3 of employee's regular rate of pay. Capped at $200/day (or $2,000 in total).

[6] EPSL for reason 5 is paid at 2/3 of employee's regular rate of pay. Capped at $200/day (or $2,000 in total).

[7] The employer and employee are encouraged to work together as to whether the employee can telework.

[8] For this EFMLA reason, the employee may take the first two weeks as unpaid or use EPSL for the first two weeks at 2/3 their regular rate of pay. If the employee has taken EPSL for a COVID-19 reason, they are still entitled to 12 weeks of EFMLA (thus, possibly using 14 weeks of leave under the FFCRA). If they take EPSL for reason 5, then the employer would run that time concurrently with EFMLA and the employee would only be entitled to ten more weeks of EFMLA. The employee may elect to use state sick and safe leave (where applicable) or existing vacation, personal, medical or sick leave under a company policy. Employees may not be required to use other forms of paid leave prior to or concurrently with EPSL or EFMLA.

Additional Notes

1. Calculating Rate of pay for EPSL and EFMLA
    a. Regular rate of pay is the hours the employee is normally scheduled to work.
    b. Part time employees and variable hour employees are calculated by looking at the average number of hours worked for the six months prior to taking leave.
    c. Employees with less than six months of service would be calculated at the average number of hours the employee would normally be scheduled to work over a two-week period.
2. Both EPSL and EFMLA can be taken on an intermittent basis, in certain situations.
3. Generally, employees are entitled to reinstatement to the same or an equivalent position. Exceptions exist for circumstances involving business closures, layoffs and key employees as provided under the FMLA, and under the EFMLA, for employers with less than 25 employees that satisfy four conditions for a hardship exemption.