

FFCRA ↴

Emergency Family and Medical Leave Expansion Act (EFMLA)

1. [FMLA still exists and can be accessed by qualified employees.]
2. EFMLA expires on December 31, 2020.
3. EFMLA Employee eligibility: Employee only needs to have been employed for at least 30 days. [Regular FMLA employee eligibility is at least 12 months employment and 1,250 hours of work.]
4. What must an employee show to qualify for EFMLA?
 - a. Unable to work or telework due to a need for leave to care for a child under 18 years of age of the employee if the school or place of care has been closed on the child care provider is unavailable due to a public health emergency (defined as COVID-19 related).
 - b. Documentation of the qualifying event can be required by the employer.
5. What is the nature and scope of EFMLA leave?
 - a. EFMLA can be up to 12 weeks in duration.
 - b. The first 10 days may be unpaid leave ... BUT:
 - i. The employee may elect to substitute other available accrued leave (e.g. vacation, personal, sick) for the 10 days.

- ii. The employee may elect to use FFCRA sick leave to cover the first 10 days also.
- iii. The employee may not, without employer agreement, "top off" FFCRA sick leave with other accrued leave.

c. After 10 days, EFMLA is PAID leave:

- i. The employee will be paid not less than 2/3 of his/her regular rate of pay multiplied by the number of hours the employee would otherwise be normally scheduled to work.
- ii. BUT the EFMLA compensation is CAPPED: The employee is paid the 2/3 amount noted above or \$200/day (\$10,000 aggregate) whichever is less.

d. EFMLA leave will generally only be taken in one-day increments (to meet policy of keeping people home to minimize the spread of COVID 19). An employer may, but does not have to, agree to an exception to this for intermittent use of EFMLA (possible application in telework situations).

6. EFMLA leave cannot be taken when the employer's business is closed, or the employee is furloughed or temporarily laid off.

7. The Department of Labor (Field Assistance Bulletin), March 24, 2020: The DOL will not bring any enforcement actions related to violations of EFMLA between March 18 and April 17 so long as the violations are not willful.