

What Employers Need To Know Webinar Questions

QUESTION: I am under 50 employees, I don't want to use the exemption, will I still be eligible for the tax credit if I pay this FMLA pay and Sick pay?

ANSWER: Yes.

Suzanne Comer 02:13 PM

QUESTION: Do both these acts we are discussing apply to 501c-6 trade associations?

ANSWER: Yes. Yes, a "covered employer" includes a private entity or individual that employs fewer than 500 employees, as well as any public agency or other entity that is not a private entity or individual that employs one or more employees. (As of March 25, 2020)

Michael Johnson 02:16 PM

QUESTION: For a full time employee, is pay based on 40 hours (normal schedule) or last 6 months of average number of hours, including overtime?

ANSWER: For a full-time employee, paid sick leave under the Family First Coronavirus Response Act (FFCRA) is based on 40 hours.

Anonymous Attendee 02:16 PM

QUESTION: Sec 110 Public Health Emergency Leave states: "(B) EMPLOYER THRESHOLD. -- Section 101(4)(A)(i) shall be applied by substituting 'fewer than 500 employees' for '50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. Doesn't this basically means the FMLA Expansion Act is applied for all companies with over 50 employees?"

ANSWER: The FFCRA applies to virtually all private entities with less than 500 employee. Private entities with less than 50 employee are covered unless they affirmatively utilize the exemption.

Anonymous Attendee 02:17 PM

QUESTION: When to consider temporary furlough and when to consider Reduction in Force?

Anonymous Attendee 02:17 PM

QUESTION: Can this leave be taken intermittently the same as normal FMLA and what if the son or daughter is disabled and over 18?

ANSWER: Paid sick leave under the FFCRA can only be taken intermittently if the employee is teleworking. Leave may not be taken intermittently for on-site work.

Anonymous Attendee 02:17 PM

QUESTION: Is there a minimum time frame for furlough - meaning put employees at least for 30 days to qualify as furlough? Can we say they are on temp furlough for 2 weeks and can employee benefit from unemployment if it for that short time?

ANSWER: Consult your employment counsel or contact Marc Engel or Paul Starkman.

Anonymous Attendee 02:18 PM

QUESTION: Any advance notice requirement for furlough or reduction in force. Are we required to give in writing they are put on furlough or reduction in force?

ANSWER: Depending on the number of employees impacted and the jurisdiction, there may be advance notice requirements under federal and/or state WARN Acts for a furlough or reduction in force. Other laws may apply as well. Consult your employment counsel or contact Marc Engel or Paul Starkman

Anonymous Attendee 02:19 PM

QUESTION: Reduction in Force is same as layoff? Can we terminate 1 employee and call it reduction in force?

ANSWER: There is no statutory definition of a reduction in force under federal law. Conceivably, the termination of 1 employee could be deemed a reduction in force.

Lucy 02:20 PM

QUESTION: If an employer is exempt from FMLA due to not having 50 or more employees within a 75 mile radius, is the employer exempt from the expanded emergency family and medical leave act?

ANSWER: No. The Emergency Family Medical Leave Expansion Act applies to most private entities having fewer than 500 employees and its definition of a covered employer is from the definition under the FMLA.

Anonymous Attendee 02:23 PM

Hello,

ASHLEIGH KEYS 02:24 PM

QUESTION: As an example, if I am diagnosed with COVID-19, under the EPSLA, I would be able to use this for pay and not use PTO- as long as it didnt surpass 80 hours if I am full time?

ANSWER: Yes.

Tiffany Roohani 02:24 PM

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QUESTION: Are you going to over the new eviction moratoriums for multifamily property owners, and how landlords should proceed if tenants do not pay rent?

ANSWER: This was not one of the subjects of our webinar.

Madison McCarron 02:25 PM

QUESTION: You mentioned that business <50 employees can apply to be exempt for the EFMLA, is this also true for EPSLA? Thank you.

ANSWER: Yes. Businesses with less than 50 employees can be exempt under the EPSLA and the EFMLEA.

Anonymous Attendee 02:25 PM

QUESTION: Also, are you going to cover small business loans and grant process?

ANSWER:

Aaron Greenfield 02:26 PM

QUESTION: Under the 6 conditions to receive emergency paid sick leave, the first one allows PTO under a Federal, State or local quarantine or isolation order related to COVID-19. In Maryland, does Governor Hogan's order to self-isolate if not working constitute such an order under the federal provisions?

ANSWER: It is not clear whether a governor's executive order requiring individuals to shelter in place would constitute a federal, state or local quarantine or isolation order.

Anonymous Attendee 02:26 PM

QUESTION: if you allow an employee to telework but they don't want to because they state they can't telework and take care of a child, are we obligated to pay the leaves under the expanded FMLA and the PSL?

ANSWER: Yes. If the employee is unable to work (or telework) due to the need to care for the employee's son or daughter whose school is closed or the childcare provider is unavailable due to COVID-19, the employer would be obligated to provide paid leave under the EPSLA and the EFMLEA.

Curtis Johnson 02:26 PM

QUESTION: Could you quickly touch on items 2 and 3?

ANSWER:

Ma Lourdes Chang 02:28 PM

QUESTION: For the emergency paid leave payment for this leave can employer apply unused vacation and sick leave or not.

ANSWER: No. For emergency paid leave under the EPSLA and the EFMLEA, an employer may not require that employees utilize their PTO.

Diane Mack 02:30 PM

QUESTION: Can you please repeat the cap of pay for the EPSLA?

ANSWER: For reasons 1-3 of the EPSLA (for the employee's own illness), leave pay is capped at \$511 per day (\$5,110 in the aggregate). For reasons 4-6, the leave pay is capped at \$200 per day (\$2,000 in the aggregate). The \$200/\$2000 caps also apply to leave under the EFMLEA.

Anonymous Attendee 02:31 PM

QUESTION: Can the employer deduct the usual employee deductions from the emergency paid leave payment, such as the employee's portion of their health insurance, employee taxes, etc?

ANSWER: Yes.

Megan Lawhon 02:31 PM

Understanding this becomes effective April 1st however, we cannot seem to get a full grasp on whether this is retroactive at all to employees who are experiencing issues NOW, prior to April 1st. Thank you!

ANSWER: The FFCRA is not retroactive.

Taj Whitt 02:32 PM

QUESTION: With this Act/Law being effective 4/1/2020 what are the employers obligation if we have allowed our employees to use these leaves before 4/1?

ANSWER: Employers will have to provide the statutory leave once the Act becomes effective on April 1, 2020, even if the employer gave employees paid leave prior to April 1.

Anonymous Attendee 02:39 PM

QUESTION: How does a small, under 50 person, company determine if they are exempt from these acts?

ANSWER: Consult Questions 4, 58-59 at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Anonymous Attendee 02:39 PM

QUESTION: I couldn't understand what the speaker said. Does the EFMLEA act start 4/1 or 5/1? Also does the Expansion Act exempt employers with less than 15 or 50 employees? Thx!

ANSWER: The EFMLEA goes into effect on April 1, 2020. Employers with less than 50 employees may be exempt.

Anonymous Attendee 02:41 PM

QUESTION: What if we ask to work as they say No..what is our options for continuing to work in our office?

ANSWER: Generally, employees may not refuse to work. However, there are exceptions to the general rule. Consult your employment counsel or contact Marc Engel or Paul Starkman.

Jesus Gonzalez 02:42 PM

QUESTION: When will this recording be available? I'd like to share it with my BOD. Thanks

Anonymous Attendee 02:43 PM

Sorry work at home and they say no

Valerie Lapham 02:43 PM

QUESTION: Thank you for this webinar! Will the emergency act cover reduced hours for employees? As an employer, how do we start the process to be able to get "reimbursement" for the paid leave if cash flow is an issue?

ANSWER: The FFCRA will cover employees working reduced hour schedules. Under the tax credit rules, the IRS has indicated that employers may retain amounts withheld from employee's paid sick leave payments rather than disbursing them to the IRS or local taxing authorities. Consult experience tax counsel or contact Marc Engel or Paul Starkman for assistance.

Cindy Schwartz 02:44 PM

QUESTION: there any new required guidelines for employers of greater than 500 employees?

ANSWER: No. Not under federal law. State and local laws may impose guidelines on employers with greater than 500 employees.

Caroline Adillon 02:44 PM

QUESTION: Is it the employees' responsibility to request leave/coverage under these new laws?

ANSWER: Yes.

Cindy Schwartz 02:45 PM

QUESTION: Do you have any recommended resources to utilize when creating Remote Work Policies and/or Disaster Preparedness Procedures?

ANSWER: Consult your employment counsel or contact Marc Engel or Paul Starkman.

Curtis Johnson 02:45 PM

QUESTION: We have been told Apartment mgmt functions are considered Essential by Homeland Security. Would you concur?

ANSWER: Consult your employment counsel or contact Marc Engel or Paul Starkman.

Claire Stevison 02:46 PM

QUESTION: Can we ask for confirmation of negative results?

ANSWER: Yes.

Maureen Morley 02:50 PM

QUESTION: So, we cannot ask if an employee has a "compromised condition" that puts them at additional risk?

ANSWER: No. Asking about pre-existing conditions is prohibited.

Paul Wilms 02:53 PM

QUESTION: Beside reimbursement for wages that will be refunded to the employer under the new act, did you also mention about reimbursement for hospitalization? If so, would that be the employer cost or the employee cost?

ANSWER:

Anonymous Attendee 02:53 PM

QUESTION: Does an employer have to provide health benefits under a furlough?

ANSWER: No. There is no requirement that an employer provide health benefits during a furlough. An employee does have to continue to provide health benefits during statutory paid sick leave.

Jake Peterson 02:54 PM

QUESTION: What about employees who elect to stay home because they are scared they are in a vulnerable demographic but who are unable to work from home? Are we required to provide any paid leave to them, or only if they are actually sick?

ANSWER: No, according to recent Department of Labor guidance, employees are only entitled to paid sick leave if they are actually sick, not merely because they are afraid to work.

Anonymous Attendee 02:58 PM

QUESTION: Can you wrap this up?

ANSWER:

Christa Lenko 02:58 PM

QUESTION: If we layoff employees, are we required to call those employees back or can we fill the open positions with someone else, whether internally or externally? Thanks!

ANSWER: If an employer lays off employees for lack of work, they have no recall rights absent a policy or contract providing such rights.

Clay Reed 02:59 PM

QUESTION: If we have an employee who is asking to stay home with her kids whose school is closed, but not full time - maybe stay home 2-3 days a week and we have another office person. While she is home, she can use PTO or use the new statutes but the first 10 days would be unpaid if she used the new FMLA or EPSLA.

ANSWER:

Karla Luarte 02:59 PM

QUESTION: Can we have access to get a copy of this Webinar

ANSWER:

Richard Alport 03:00 PM

QUESTION: Didn't answer whether we can reduce hourly or salaried hours.

ANSWER: Employers can generally reduce the hours of hourly and salaried employees, but deductions from the salaries of exempt employees may be problematic. Consult your employment counsel.

Moona Aderman 03:00 PM

Paul and Mark did a great job, but went too fast. Looking forward to the compilation of the data.

Darla Bayliss 03:01 PM

QUESTION: If we have an employee that is currently on leave based on doctor's orders due to COVID, how does the new Emergency Sick Leave law that hasn't yet gone into effect, pertain to this employee? (We have a total of 15 employees)

ANSWER: Once the new laws go into effect on April 1, 2020, the employee will be entitled to emergency paid sick leave under the EPSLA for up to 10 days.

Cindy Breslin 03:01 PM

QUESTION: They briefly stated that there would be credit for health benefits to the employer. Please elaborate.

ANSWER: According to the IRS, every dollar of required paid leave (plus the cost of the employer's health insurance premiums during the leave) will be entitled to a dollar-for-dollar refundable tax credit.

Michelle McMillan 03:01 PM

QUESTION: Does the paid sick leave cover an employee when the business elects to close or reduce staff to help control the spread of COVID-19?

ANSWER:

Richard Alport 03:01 PM

QUESTION: What if employee has already been on FMLA this past 12 months, say for after pregnancy, can they use the extended FMLA as well?

ANSWER: No. An employee only gets a total of 12 weeks of regular FMLA and extended FMLA is a 12 month period.

Stephanie Woodson 03:01 PM

QUESTION: Are we an essential business? Rules for rent forgiveness? Should maintenance continue working 40 hours weekly?

ANSWER: Whether or not you are an essential business depends on the terms of your state or local shutdown executive order.

Anonymous Attendee 03:01 PM

QUESTION: Should we require a doctor's note from employees when they take a sick day? Typically we require after 2 days of sick time. And if they use TeleHealth how would that work?

ANSWER: Many employers are implementing their general FMLA procedures of requiring a doctor's note is employees take paid or unpaid sick leave. However, as more doctors and hospitals are being overrun by the COVID-19, other accommodations may need to be made. If employees utilize telehealth, they may still be able to obtain an email or fax documenting that a diagnosis was sought.

Greg Brown 03:01 PM

Still Live

Terie Blankenbaker 03:02 PM

QUESTION: How will I access the recording and the resources you mentioned that includes everything mentioned in the meeting?

ANSWER:

Jeff Oatis 03:02 PM

Question: Can you please include me for any recording or Q&A?

ANSWER:

Ashanti Watson 03:03 PM

QUESTION: Just confirming that we will have access to a recording of this seminar?

ANSWER:

Dawn Ewing 03:03 PM

QUESTION: If any employee was out of work the last 2 weeks because he was out of the country and wanted to come back to work but we told him to stay home for 2 weeks, will we get reimbursed for that?

ANSWER: Employers who provide paid sick leave prior to the FFCRA becoming effective on April 1, 2020 will not be entitled to a tax credit for that pre-FFCRA paid sick leave.

Terie Blankenbaker 03:03 PM

QUESTION: Will you send the resource in an email?

ANSWER:

Jeff Oatis 03:03 PM

tle@PierceEducationProperties.com

Michael Long 03:03 PM

QUESTION: Can an employee who is in a high risk health category use EFMLEA or EPSLA if they don't have a diagnosis or any symptoms and there is essential work available? We feel this person just doesn't want to work.

ANSWER: Generally, an employee who does not have a diagnosis or any symptoms will not be entitled to paid sick leave under the EFMLEA or the EPSLA.

Yolanda Moreno 03:03 PM

QUESTION: Is there a call in number for audio?

ANSWER:

From Luanne McNulty to All Panelists: 02:06 PM

QUESTION: When to consider temporary furlough and when to consider Reduction in Force?

ANSWER:

From Becky Coleman to All Panelists: 02:08 PM

QUESTION: Will you be able to send out your slides?

ANSWER:

From Lindsay Lenow to All Panelists: 02:09 PM

QUESTION: Do we know if you become ill on two separate occasions between 4/1 and 12/31 (once you have COVID-Symptoms and it's negative, and a month later you have symptoms and are positive) can you only claim the benefits in their entirety once or with each occasion?

ANSWER: Once, up to 80 hours for the employee's own symptoms and illness.

From Mary Howell to All Panelists: 02:09 PM

QUESTION: What happens regarding employees who took leave prior to 4/1 regarding pay? And credits?

ANSWER: Employees who took leave before April 1 will be eligible for statutory leave after April 1, but employers will not receive a tax credit for pre-April 1 leave.

From Luanne McNulty to All Panelists: 02:12 PM

QUESTION: Is there a minimum time frame for furlough - meaning put employees at least for 30 days to qualify as furlough? Can we they are on temp furlough for 2 weeks and can employee benefit from unemployment if it for that short time?

ANSWER: There is no minimum time frame for furloughs or layoffs, but there may be different waiting periods to be out of work in order to obtain unemployment benefits, depending on the state.

From Bernadette Cepeda to All Panelists: 02:13 PM

QUESTION: What if the kids usually look after themselves?

ANSWER: The employee must be unable to work (or telework) due to the need to care for a son or daughter whose school is closed or the daycare provider is unavailable due to COVID-19.

From Luanne McNulty to All Panelists: 02:14 PM

QUESTION: Any advance notice requirement for furlough or reduction in force. Are we required to give in writing they are put on furlough or reduction in force?

ANSWER: There may be advance notice requirements for furloughs and reductions in force depending on how many employees are affected. Consult with your employment counsel.

Reduction in Force is same as layoff?

From Jason Costello to All Panelists: 02:15 PM

QUESTION: Are there other reasons other than child care reasons? What about people that are high risk and people that are required to go into high risk situations (like maintenance staff normally required to go into occupied apartments)?

ANSWER: Employees may only take paid leave under the EFMLEA to care for a son or daughter whose school or daycare is closed because of COVID-19. Employees who are high risk or who have high risk jobs may not be entitled to paid leave under the FFCRA.

From Bernadette Cepeda to All Panelists: 02:15 PM

QUESTION: Do we use the normal FMLA docs?

From Jake Peterson to All Panelists: 02:17 PM

QUESTION: What if employees take a voluntary leave of absence because they fear they fall into the vulnerable demographic? Are we required to offer them paid time off if they have not actually been sick?

ANSWER: See above question and answer.

From Keri Damgar to All Panelists: 02:20 PM

QUESTION: To clarify/confirm, this act only applies to employers that have 500 employees or less? Or 500 employees or more?

ANSWER: The FFCRA applies only to employers with less than 500 employees.

From Michael Pollack to All Panelists: 02:22 PM

QUESTION: This is all the same as the act "Employee Rights" form put out. What do you have that's different or can we send this out to everyone and move on?

ANSWER:

From Steve Wiley to All Panelists: 02:23 PM

QUESTION: What do you mean "In the aggregate?"

ANSWER: "In the aggregate," means the total amount of sick leave pay that the employee may receive during the statutory leave.

From Amanda Zinsmeyer to All Panelists: 02:23 PM

QUESTION: What was the company size to be covered for EPSLA?

ANSWER: The FFCRA applies only to employers with less than 500 employees.

From Colleen Kelley to All Panelists: 02:23 PM

QUESTION: Has the DOL provided guidance on how the employee applies for the FMLA expansion?

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

From Cindy Portis to All Panelists: 02:24 PM

QUESTION: Are there slides for what Paul is talking about?

ANSWER:

From Miranda Jernigan to All Panelists: 02:43 PM

QUESTION: I was on a call earlier today that said that in order for Business Interruption Insurance to take effect, a direct physical loss is typically required.

ANSWER:

From Anita Hord to All Panelists: 02:47 PM

QUESTION: As you get to the travel question - does it matter anymore since covid-19 seems to be everywhere, not just in hot spots or overseas?

ANSWER:

From Michele Reagan to All Panelists: 02:47 PM

QUESTION: Can an employee ask about an employer's exposure?

ANSWER: Yes.

From Susan Wright to All Panelists: 02:59 PM

QUESTION: If we missed any part of this presentation can we rewatch it?

ANSWER:

From Tiffany Nolot to All Panelists: 03:00 PM

QUESTION: If an employee requests time off, do we have the right to ask for proof of the need?

ANSWER: Yes.

From Marion Durand to All Panelists: 03:01 PM

QUESTION: Are companies over 500 employees eligible for the Tax Credits? If not, is there relief companies over 500 employees?

ANSWER: No. As of April 1, large companies with over 500 employees are not eligible for tax credits under the FFCRA. Congress is reportedly reconsidering this issue.

From Yolanda Moreno to All Panelists: 03:01 PM

QUESTION: Hello, is there a call in number for this meeting?

ANSWER:

From Martha Machuga to All Panelists: 03:01 PM

Question: My son-in-law was laid off this morning. No warning, no notice, no final check for PTO, vacation pay, etc. The company is letting higher paid employees go to hire at a lower wage. Would he have any recourse during this time?

ANSWER: Consult with an employment attorney.

From Asillin Clark to All Panelists: 03:01 PM

Question: I am unclear on the PTO requirements, is the pay under EPSLA in addition to the PTO they already have, or do they use the PTO they have accrued?

ANSWER: The paid sick leave under EPSLA is in addition to PTO employees may already have from their employers.

From Wyatt Wheeler to All Panelists: 03:02 PM

QUESTION: How does this virus effect people having to pay rent?

ANSWER:

QUESTION: Can we still hold people to the lease?

ANSWER: