

05/05/2020

A message from Texas Health and Human Services Commission.

Families First Coronavirus Response Act Information for FMSAs and CDS Employers

Background:

The United States Department of Labor (DOL) issued a temporary rule implementing the paid sick leave and expanded family medical leave provisions of the federal Families First Coronavirus Response Act (FFCRA), as amended by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The rule is effective from April 2, 2020, through December 31, 2020.

The rule was published in the Federal Register on April 6, 2020, and can be found here:

<https://www.federalregister.gov/documents/2020/04/06/2020-07237/paidleave-under-the-families-first-coronavirus-response-act>.

Key Details:

MCOs should remind Financial Management Services Agencies (FMSAs) and Consumer Directed Services (CDS) employers that they are required to comply with all applicable employment-related laws, including the DOL temporary rule and associated guidance about the FFCRA. MCOs may do so by sharing HHSC Information Letter 2020-22 with FMSAs and CDS employers.

The information contained in the letter is intended only as a high-level summary of paid leave offered through the FFCRA and CARES Act. For further details and questions about the DOL temporary rule or IRS instructions, MCOs, FMSAs and CDS employers should contact the U.S. Department of Labor, Wage and Hour Division, or the IRS.

Resources:

Information Letter 2020-22 (also attached)

Contact:

CDS Policy & Operations team at CDS@hhsc.state.tx.us

Attachment: IL20-22 FFCRA Guidance for CDS_20200501.pdf

Type: Informational

To: MMP; STAR+PLUS; STAR HEALTH; STAR KIDS

From: Policy



Date: May 1, 2020

To: Financial Management Services Agencies (FMSAs)
Information Letter No. 20-22

Subject: Information for FMSAs and Consumer Directed Services (CDS)
Employers on the Families First Coronavirus Response Act

The United States Department of Labor (DOL) issued a temporary rule implementing the paid sick leave and expanded family medical leave provisions of the federal Families First Coronavirus Response Act (FFCRA), as amended by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The rule is effective from April 2, 2020, through December 31, 2020. The rule was published in the Federal Register on April 6, 2020, and can be found here:

<https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>.

The purpose of this letter is to remind FMSAs and CDS employers that they must comply with all applicable employment-related laws, regulations, and guidance, including the DOL temporary rule and associated guidance, as well as instructions from the Internal Revenue Service (IRS), related to implementation of the FFCRA.

The information contained in this letter is intended only as a high-level summary. For further details and questions about the DOL temporary rule or IRS instructions, FMSAs and CDS employers should contact the U.S. Department of Labor, Wage and Hour Division, or the IRS at:

DOL:

- 1-866-4-US-WAGE
1-866-487-9243
- www.dol.gov

IRS:

- *For Individuals:*
 - ▶ 800-829-1040
 - ▶ 7 a.m. to 7 p.m. local time
- *For Businesses:*
 - ▶ 800-829-4933
 - ▶ 7 a.m. to 7 p.m. local time
- www.irs.gov

Overview of the FFCRA

On March 18, 2020, the FFCRA was signed into federal law and creates two new emergency paid leave requirements in response to the Coronavirus Disease 2019 (COVID-19) global pandemic. The Emergency Paid Sick Leave Act (EPSLA) entitles certain employees to take up to two weeks of paid sick leave. The Emergency Family and Medical Leave Expansion Act (EFMLEA) amends the Family Medical Leave Act (FMLA) and permits certain employees to take up to twelve weeks of expanded family and medical leave, ten of which are paid, for specified reasons related to COVID-19.

Under the FFCRA, covered private employers qualify for a reimbursement through refundable tax credits, as administered by the U.S. Department of Treasury, for all qualifying paid sick leave wages and qualifying family and medical leave wages paid to an employee who takes leave under the FFCRA.

Emergency Paid Sick Leave Act (EPSLA)

The EPSLA requires employers to provide paid sick leave to employees who are unable to work for six reasons having to do with COVID-19 where the employee:

- (1) Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- (2) Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

- (3) Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- (4) Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- (5) Is caring for their son or daughter whose school or place of care is closed or whose child care provider is unavailable due to COVID-19 related reasons; or
- (6) Is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Covered Employers

Private employers with fewer than 500 employees must comply with the EPSLA.

Eligible Employees

Full-time employees are entitled to 80 hours of paid sick time. Part-time employees generally are entitled to the average number of hours the employee works in a two-week period, although special rules may apply to part-time employees with varying schedules.

Full Pay for Sick Leave

An employee qualifies to receive their regular rate of pay for each hour of sick leave taken if they:

- Are subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- Have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- Are experiencing symptoms of COVID-19 and are seeking medical diagnosis.

The employee is entitled to receive up to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

Two-Thirds Pay for Sick Leave

An employee qualifies to receive two-thirds their regular rate of pay for each hour of sick leave taken if they are:

- Caring for an individual subject to a federal, state or local quarantine or isolation order related to COVID-19, or an individual who has been advised by a health care provider to self-quarantine due to COVID-19 concerns;
- Caring for their child whose school or place of care is closed, or child care provider is unavailable because of COVID-19; or
- Experiencing any other substantially similar condition that may arise, as specified by the federal Secretary of Health and Human Services.

In these circumstances, the employee is entitled to receive two-thirds of their normal pay, up to a maximum of \$200 per day, or \$2,000 over a two-week period.

Additional restrictions for paid sick leave under the EPSLA include:

- Paid sick leave offered through the EPSLA expires December 31, 2020.
- Paid sick time applies to employees regardless of how long they have been employed by the employer.

An employer cannot require the employee to use other paid leave prior to using the paid leave provided by the EPSLA.

Emergency Family and Medical Leave Expansion Act (EFMLEA)

The EFMLEA requires employers to provide expanded paid family and medical leave to eligible employees who are unable to work because the employee is caring for their son or daughter whose school or place of care is closed or whose child care provider is unavailable due the COVID-19 public health emergency, as declared by a Federal, State or local authority.

Covered Employers

Private employers with fewer than 500 employees must comply with the EFMLEA.

Eligible Employees

All employees who have been employed by a covered employer for at least thirty calendar days are eligible to take expanded family and medical leave under the EFMLEA.

Unpaid Leave for First Two Weeks

An employee is entitled to take up to twelve weeks of leave for the purpose described in the EFMLEA. The first two weeks of this leave are unpaid, although an employee may substitute paid sick leave under the EPSLA or paid leave under the employer's preexisting policies for these two weeks of unpaid leave.

Paid Leave for Following Period up to Ten Weeks

The following period of up to ten weeks of expanded family and medical leave must be paid at two-thirds the employee's regular rate of pay. An eligible employee may elect to use, or an employer may require that an employee use, such expanded family and medical leave concurrently with any leave offered under the employer's policies that would be available for the employee to take to care for their child, such as vacation or personal leave or paid time off.

The total payment of paid family and medical leave for this ten-week period is capped at \$200 per day and \$10,000 in the aggregate, for a total of no more than \$12,000 when combined with two weeks of paid leave taken under the EPSLA.

Exemptions and Exclusions from FFCRA Benefits

Small Business Exemption

Employers with fewer than 50 employees are exempt from providing paid sick leave under EPSLA and expanded family and medical leave under the EFMLEA when the employer determines that imposition of such requirements would jeopardize the viability of the business as a going concern. To elect this small business exemption, the employer must document that it has made such a determination pursuant to the exemption criteria set forth in the DOL temporary rule.

Exclusion for Health Care Providers and Emergency Responders

Employers who employ health care providers or emergency responders may exclude such employees from taking paid sick leave under EPSLA and expanded family and medical leave under the EFMLEA. The decision to exclude such employees is made by the employer on a case-by-case basis.

The DOL temporary rule defines “health care providers” to include anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer or entity.

Reimbursement for Paid Leave under the FFCRA

Under the FFCRA, covered employers are entitled to a fully refundable tax credit equal to the required paid sick leave or expanded family and medical leave. The IRS has issued guidance regarding the tax credits in its ***COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs*** found here: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>. For further information on tax credits, see <https://www.irs.gov/forms-pubs/about-form-7200>. See also <https://www.irs.gov/pub/irs-drop/n-20-21.pdf>.

Information on third party payer arrangements for an employer’s Federal employment tax withholding, tax return preparation, reporting and tax payment responsibilities can be found here: <https://www.irs.gov/government-entities/federal-state-local-governments/third-party-payer-arrangements-section-3504-agents>.

Impact to CDS Budget

FFCRA paid sick leave and expanded family and medical leave should be administered separately from the CDS employer’s budget because the cost of FFCRA benefits are paid by the federal government through tax credits. In addition, providing FFCRA benefits will not affect Medicaid claiming processes, as the cost for these benefits will not be supported by new Medicaid dollars.

Documentation of Need for Leave

Prior to taking paid sick leave under the EPSLA or expanded family and medical leave under the EFMLEA, an employee is required to provide to the employer documentation containing certain information, including the qualifying reason for the leave and the employee's oral or written statement that the employee is unable to work because of the qualified reason for leave. The employer may also request an employee provide such additional material as needed for the employer to support a request for tax credits pursuant to the FFCRA.

Employer Notice

The DOL temporary rules requires every employer covered by FFCRA's paid leave provisions to post a notice explaining the FFCRA's paid leave provisions and providing information concerning the procedures for filing complaints of violations of the FFCRA with the Wage and Hour Division. An employer may email or direct mail this notice to employees or post this notice on an employee information website.

Employers may duplicate the text of the DOL's [model notice](#) or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice. Prototypes are available in several languages at <https://www.dol.gov/agencies/whd/posters>. Employers furnishing notices to sensory-impaired individuals must also comply with all applicable requirements under Federal or State law.

Resources

Families First Coronavirus Response Act, [Public Law 116-127](#) (FFCRA)

Coronavirus Aid, Relief, and Economic Security Act, [Public Law 116-136](#) (CARES Act)

Department of Labor [temporary rule](#) under new Title 29, Code of Federal Regulations, Part 826 – Paid Leave Under the Families First Coronavirus Response Act

IRS guidance related to the FFCRA and COVID-19 found on the [IRS website](#), including:

- [Coronavirus Tax Relief and Economic Impact Payments](#)
- [Coronavirus Tax Relief for Businesses and Tax-Exempt Entities](#)
- [Coronavirus and Economic Impact Payments: Resources and Guidance](#)

DOL guidance related to the FFCRA and COVID-19 found on the [DOL website](#), including:

- [Families First Coronavirus Response Act: Questions and Answers.](#)
- [COVID-19 and the American Workplace](#)
- [Families First Coronavirus Response Act: Employer Paid Leave Requirements](#)
- [Families First Coronavirus Response Act: Employee Paid Leave Rights](#)

Additionally, Applied Self-Direction, the national technical assistance organization for self-direction, has posted [information and resources](#) related to COVID-19 and the FFCRA specific to self-direction programs that are similar to the CDS option.

Sincerely,

[signature on file]

Emily Zalkovsky
Deputy Associate Commissioner
Office of Policy and Program
Medicaid and CHIP Services