



# Families First Coronavirus Response Act and Covid-Related Accommodations

Presented by:

Patricia E. Reilly, Partner

Chair, Labor and Employment Group

Murtha Cullina, LLP

[preilly@murthalaw.com](mailto:preilly@murthalaw.com)

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# Agenda

- Families First Coronavirus Response Act
- Emergency Paid FMLA
- Emergency Paid Sick Leave
- Covid-Related Accommodations

# The Families First Coronavirus Response Act (FFCRA)

- Enacted March 18, 2020; Effective April 1, 2020 through December 31, 2020
- Requires private insurance plans to provide free COVID-19 testing;
- Requires employers to provide emergency paid sick leave to workers affected by COVID-19 and expands family and medical leave; and
- Provides increased funding for state unemployment insurance programs, food stamp and nutritional programs and others

# Emergency Family and Medical Leave Expansion Act (EFMLA)

- EFMLA applies to employees of all private employers with fewer than 500 employees and public sector employers (regardless of size)
- Note: Federal FMLA 50+, CT FMLA 75+, CT PMLA 50+

# Emergency Family and Medical Leave Expansion Act

- Expanded employee eligibility under FFCRA
  - Eligible employee is anyone who has been employed for at least 30 calendar days
  - Compare to FMLA: Eligibility normally contingent on working at least 1,250 hours during the twelve months prior to FMLA leave

# ADDITIONAL REASON FOR LEAVE

- New reason for EFMLA leave:
  - caring for a child under 18 years of age whose school or childcare provider has been closed, or is unavailable due to the COVID-19 emergency.
- Not for employee who *chooses* not to send child to school *if school is open*

# Emergency Family and Medical Leave Expansion Act

- Expanded pay benefits
  - The first 10 days unpaid, but employees can use accrued PTO
  - After 10 days, employer obligated to pay full-time employees 2/3 of regular rate of pay for employee's regular weekly hours for up to 10 weeks
    - Part-time employees or those with irregular schedules paid at 2/3 of regular rate for average number of hours worked over prior 6 months of employment
    - Pay capped at \$200/day and \$10,000 total
  - Small businesses (<50 employees) can seek an exemption if compliance would jeopardize the business viability

# Unable to Work

- **What does it mean to be unable to work, including telework for COVID-19 related reasons?**
- You are unable to work if your employer has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework.



# Telework in place of Leave

- If you and your employer agree that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

# Telework

- Similarly, if you are unable to perform those teleworking tasks or work the required teleworking hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave. Of course, to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

# Telework

- If your employer permits teleworking—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick leave.

# Emergency Paid Sick Leave Act

- Applies to all employers with <500 employees
- Requires 80 hours of paid sick time (pro-rated for part time employees)
  - Paid sick time in addition to already accrued sick time
- Upon the request of an employee, employer must permit an eligible employee to use paid sick time under FFCRA to cover initial 10-day period of unpaid leave under FMLA
  - Who is an eligible employee? Employees are eligible on day one of employment

# Emergency Paid Sick Leave Act

- Employers must provide paid sick time to extent employee is unable to work (or telework) because:
  1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
  2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
  3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

# Emergency Paid Sick Leave Act

4. Employee caring for an individual who is subject to quarantine or isolation order, or has been advised to self quarantine by a health care provider, due to COVID-19;
5. Employee caring for a son or daughter of such employee if school or place of care of son or daughter closed, or child care provider of such son or daughter is unavailable, due to COVID-19 precautions;
6. Employee experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with Secretary of the Treasury and the Secretary of Labor.

# Emergency Paid Sick Leave Act

- Benefits
  - Full time employees receive full pay for leave due to reasons 1-3, and 2/3 pay for reasons 4-5
  - Part time employees – benefit calculated based on an average two week period
  - Employees that have worked <6 months: calculated based on regularly scheduled hours

# Emergency Paid Sick Leave Act

- Benefits (cont'd)
  - Emergency sick leave payments capped at \$511 per day (\$5,110 total) for employees who take leave because of reasons (1), (2), or (3), i.e., illness or quarantine. Payments capped at \$200 per day (\$2,000 total) for employees who take leave for reasons (4), (5), or (6), i.e., care for affected individuals or school closure
  - Paid sick leave provisions of the Act do not preempt state paid sick leave laws such as Connecticut's Paid Sick Leave Law
  - Paid sick leave provisions do not diminish an employee's existing rights under a collective bargaining agreement or existing employer policy



# Intermittent Leave Allowed

- Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking.

# Intermittent Leave

- Similarly, if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.

# Intermittent Leave

- You may take intermittent leave in any increment, provided that you and your employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

# Department of Labor Position

- The Department of Labor encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

## NO FFCRA IF WORKSITE CLOSED; REDUCED SCHEDULE

- If worksite is closed or you are working a reduced schedule, FFCRA is not available to make up the difference. Then furlough, layoff, unemployment.

# Exceptions?

- Health Care Provider Employee Exception
- Emergency Responder Employee Exception
- Small businesses with fewer than 50 employees may seek an exemption from the expanded FMLA and PSL requirements if compliance would jeopardize the viability of the business as a going concern
- DOL's March 24 guidance instructs small businesses to “document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.”

# Tax Credits to Employers

- Employee Retention Credit: Deductions from quarterly payroll taxes to pay for EMPFML and EPSL
- <https://www.irs.gov/pub/irs-pdf/p5419.pdf>

# Unemployment and FFCRA

- FFCRA provides relief to state UI offices to expand UI coverage to as many claimants as possible
  - Full federal funding for an additional 26 weeks of extended benefits (EB)
  - \$600 weekly payment to anyone who receives unemployment



# Notice Requirements

- DOL Poster
- All covered employers must post in a conspicuous place, email, or mail to employees
- [https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

## Other Leave/Accommodations:

- FMLA / CTFMLA / CT PSL
- Disability Accommodation
- Pregnancy leave
- Religious accommodation for vaccine

# FFCRA and FMLA

- **Employee may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the Emergency Family and Medical Leave Expansion Act.**

# FFCRA and FMLA

- If Employee has taken some, but not all, 12 workweeks of leave under FMLA during the current 12-month period determined by employer, Employee may take the remaining portion of leave available. If Employee has already taken 12 workweeks of FMLA leave during this 12-month period, Employee may not take additional expanded family and medical leave.

# FFCRA and FMLA

- Currently expanded family and medical leave is available only until December 31, 2020; after that, only FMLA leave available. Will FFCRA be expanded?

# FFCRA and Paid Sick Leave

- Employee is entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave Employee has taken under the FMLA. Paid sick leave is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap.

# FFCRA and Paid Sick Leave

- But if Employee takes paid sick leave concurrently with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

# Disability Accommodations

- Possible Accommodations: Temporary job restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment, allowing telework. Engage in interactive process.



# Accommodation for Family Members?

- The ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.

# Pregnancy Accommodation

- CT law requires accommodation of a pregnancy-related disability.
- If employee requests leave of absence, Employer can request doctor's note.

- **QUESTIONS?**