

H.R. 6201: Families First Coronavirus Response Act Q&A

SMALL/LARGE NONPROFITS, EXEMPTIONS

- 1. How is the number of employees defined?**
Total number of employees includes furloughed staff and those working reduced hours but does NOT include those who are laid off.
- 2. Are there exemptions for employers with fewer than 50 (or other threshold) employees?**
There is a provision that says the DOL has the authority to issue regulations to exempt small employers (50 or less) but they have NOT done that. At the moment, there are no exemptions for employers with 50 or less employees, including nonprofits.
- 3. Does this apply to employers of over 500 employees?**
At this time the act does NOT apply to organizations with more than 500 employees. However, if an organization has more than 500 employees and has laid off enough staff to bring them under the 500-person threshold, the law would apply (e.g., an organization with 510 employees laid off 15 staff, bringing their total employee count to 495 – the act now applies).
- 4. Might the governor's stay-at-home order be a "substantially similar" condition thereby making all employees (of employer of 500 or less) in PA covered?**
We do not believe this act is meant to provide general support to anyone who can't work. Instead, the FFCRA is to support those who are out of work for health reasons (directly related to the COVID-19 pandemic) and/or childcare obligations due to the COVID-19 pandemic. This could change but for now this is how we are interpreting this law.

ELIGIBILITY/EMPLOYEE STATUS

- 1. What are the implications for a reduced hours of work situation? E.g., salaried employee has to take care of child due to lack of childcare but can squeeze in a couple hours of work a day. Do you pro-rate based on a 7.5 or 8 hour workday or what?**
This has not been specifically addressed in the statute. We believe that you can give partial time. Since the regular FMLA allows for intermittent leave, we don't see any reason why that would not apply here. If the employee wants to work and the employer wants the employee to continue working even part-time, we are advising the employer to pay the pro-rated amount.
- 2. If the governor orders non-essential businesses to close, are those employees affected by this legislation, even if they're not sick or are not caring for children/others?**
No. In order for an employee to qualify, they must be out of work to take care of themselves or their children. If they are home because they have no work to do, the governor has deemed their business non-essential, etc., that does not "count" under this act.
- 3. Public libraries were ordered to close by the Office of Commonwealth Libraries (an agency within the PA Department of Education) until at least April 6. Does this count as a quarantine or isolation order from a state government? Does that mean libraries have to allow their employees to take two weeks sick leave before furloughing workers?**
No, this does not count under this law.

DOCUMENTATION

- 1. Will there be a form for our employees to fill out requesting this sick and/or extended leave, similar to the FMLA form?**

Under the EFMLA, an employee wouldn't need any kind of paperwork because it's only for the limited purpose of taking care of a child. Under the sick leave act, the employee also wouldn't use FMLA paperwork but the employer can ask for a doctor's note or other kind of medical certification.

2. **Are employees required to provide any certifications (e.g., doc notes, childcare closure note, etc.) in order to be eligible for FFCRA?**

If the employee is claiming a health-related reason for not working, the employer can request a doctor's note to support the fact that this person is being asked to self-quarantine or isolate, this person is being tested, and/or this person has tested positive. It's a little trickier with childcare and may require further conversation with the employee. The employer may have to take some of this on faith.

TIMING

1. **What is the effective date? Will it be back-dated to date of law signing?**

Eligibility under this act starts on April 1. Any time taken prior to April 1 cannot be counted toward an employee's sick leave or FMLA time under the FFCRA.

2. **We've had staff in isolation or caring for children for 2 weeks. Are they eligible?**

Under this act, if the staff has been in isolation due to exposure to or impact of COVID-19, they are eligible. If staff has been at home due to care of a child they are eligible. If they are working at home only due to governor's order, they are NOT eligible.

PTO vs. REGULAR FMLA vs. SICK LEAVE vs. EFMLA

1. **We are 15 employees all who have been in the company for over 30 days. If we offer sick/vacation leave, does that apply concurrently with this new Act or does it need to be exhausted first?**

Employers CANNOT require staff to take PTO, vacation time, sick time, etc. before giving them these sick leave benefits. The employee has the right to choose if they want to take PTO first.

2. **What are the differences between the sick leave and the family leave?**

Sick leave only applies to the first two weeks. The expanded family leave then applies for the next 10 weeks and is only in place to support employees who cannot work due because they need to take care of a child under the age of 18.

3. **If an employee already has FMLA, do they get 12 more weeks or does that time count against the 12 weeks of EFMLA?**

If an employee is taking care of a sick family member or is sick with something other than coronavirus under regular FMLA, EFMLA does not apply. If they have already used 4 weeks of regular FMLA within the last 12 months, she would only be able to use 8 weeks under EFMLA.

4. **If employees are working at home and do not want to work their full 7 hours a day, are they required to use their PTO time for the difference?**

This is not a situation covered under this act. Consult your own PTO policy/employee handbook.

5. **Can an employer pay an employee the other 1/3 legally and still get the benefit of the EFMLA with under 50 employees?**

Yes. If someone is getting paid 2/3 their regular rate, the employer can always be more generous if they have the means and pay out the additional 1/3. The employer will not be reimbursed for that additional 1/3 the way that they will be reimbursed for the 2/3 pay.

6. **If an employee is off on another approved sick leave provision can they switch to the paid sick leave/EFMLA and return to the original leave once the 12 weeks run out?**
No, regular FMLA cannot be converted to EFMLA.

Maternity Leave & Child Care

7. **We have a staff member who is going to be on maternity FMLA for 12 weeks starting approximately 4/11. Can she apply for paid leave under EFMLA even though we already have her paperwork for unpaid FMLA? Could she take the entire 12 weeks as EFMLA even though she has to take 6-8 weeks to recover?**
Technically, she may apply for paid leave under EFMLA because she is going to be staying home to take care of a child.
8. **If you have 2 employees working for the same employer, can the employer say they have to share time off to take care of a joint child?**
Under the regular FMLA, both staff have rights to stay home and take care of a child but not at the same time. If there are two people working for the same employer, they can switch off but they can't be off at the same time. The same applies under EFMLA.
9. **Will the EFMLA apply to taking care of a grandchild?**
If the employee is caring for the child because school is closed or the employee is the caregiver, then **no**. The actual text of the Emergency Paid Sick Leave Act portion of the FFCRA states the employee has to be taking care of a "son or daughter." If the employee is caring for a child because there is a government quarantine or isolation order (that we do not believe we have yet) or a health care provider has ordered the child to self-quarantine, then **yes**. That's because it says "individual" and is not otherwise defined, a "child" being an "individual." Benefits are available for two weeks in that case. Under the Expansion Act to the FMLA, there is also a specific reference to son or daughter, so **no** to a grandchild in that situation unless the grandparents are the legal guardians.

Sick Leave (First Two Weeks)

10. **I'm unclear about the rules and provisions for the initial two weeks.**
Qualified employees get paid for 2 weeks at different rates depending on why they qualify. This applies to both exempt and non-exempt employees. There are 6 qualifying reasons – 3 for someone taking care of themselves and 3 for someone taking care of others.
- a. Taking care of yourself: this employee gets their regular rate of pay capped at \$511 per day or \$5,110 for the 2-week period. If their regular rate of pay is \$400/day, that's what they would get paid. Qualifying reasons for not being able to work or telework:
 - i. The employee has been advised by a health care worker to self-quarantine
 - ii. The employee has symptoms of COVID-19 and they are seeking a medical diagnosis (e.g. if I'm working at home while I wait for a call from my doctor, that does not count but if I'm stuck in the ER waiting to be tested, that would count)
 - iii. The employee is subject to a federal, state, or local "quarantine or isolation order". Governor Wolf's "stay-at-home" orders would not fall under the definition of a quarantine or isolation order. However, if a local authority says that a specific apartment complex or cruise ship, etc. And, if you are still able to work while under a quarantine or isolation order, the act does not apply.

- b. Taking care of others: this employee gets 2/3 of their regular rate, capped at \$200/day with an overall cap of \$2,000 for the 2-week period.
 - i. Taking care of an individual who is subject to an isolation/quarantine order or has been advised by health care professional to self-quarantine (the statute does NOT specify if the individual must be a family member)
 - ii. Taking care of a child under 18 because of school/daycare closure (ONLY if this causes the employee not to be able to work/telework)
 - iii. Catch-all – anything else deemed appropriate by the DOL
- 11. **2 weeks of paid sick leave/emergency leave for childcare – must it be used consecutively, or can it be split?**

We have no reason to believe this time must be taken consecutively; the law does not specifically prohibit splitting it up.
- 12. **Who is paying for the 80 hours of paid sick leave?**

Employers will get this money back in the form of being relieved of the obligation to pay federal withholding taxes (social security, other employee withholdings) until you pay yourself back the amount you have paid to employees under the paid sick leave act and/or EFMLA. This is essentially like paying yourself back.

INFORMATION-SHARING/NOTIFICATION

1. **How can we distill all this (ever-changing!) info into simple handouts for our staff? FT vs PT, on health insurance vs not, laid off vs furloughed?**

The U.S. Department of Labor has created a [downloadable notice available here](#).
2. **Where can we find the DOL poster? Does it need to go to active employees only or to the furloughed employees, too? Do we still need to send the DOL notice to staff working from home?**

The DOL notice can be downloaded [here](#). It can be posted in a physical office space with other labor law poster. Since most companies have staff working remotely, the DOL has said you may email it to all employees, snail mail it to all employees, post on an organizational intranet, or post on your regular public-facing site with an indication that this is for your employees. The notice must go to ALL employees, included furloughed staff and any new staff you hire after the date the notice goes out.

TAX IMPLICATIONS

1. **Tax credits do not apply to nonprofits – are we sure private, 501(c)(3)s need to comply?**

Nonprofits pay payroll taxes, so this law does apply to 501(c)(3)s.
2. **Is there an expectation that amounts paid for these leaves will be noted on W2s? If so, are there boxes/codes assigned yet?**

Yes, these amounts paid are considered wages and compensation and therefore need to be noted on W2s. Unsure which box.
3. **Is it all withholding taxes or just the part that the employer pays? In other words, do we still withhold taxes from employee pay?**

If an employer is cutting a check to an employee to care for herself under the emergency paid sick leave act, and she normally earns \$600 per week, she will receive the capped amount of \$511 gross, but then with taxes and normal withholdings taken out.

REIMBURSEMENT/UNEMPLOYMENT

1. **Not sure this is covered under HR 6201 but will agencies who are self-insured for unemployment be offered relief?**

This is an issue that PANO is exploring. An update will soon be posted on PANO's website.

2. **Will our nonprofit be reimbursed for the 80 hours of paid sick time that is paid out or is that the company's responsibility?**

Employers will get this money back in the form of being relieved of the obligation to pay federal withholding taxes (social security, other employee withholdings) until you pay yourself back the amount you have paid to employees under the paid sick leave act and/or EFMLA.

3. **We are a reimbursing employer. Our reserve balance will be depleted quickly. Can our nonprofit apply for relief from unemployment charges?**

Yes. Some stipulations apply to self-insured organizations.

4. **If we compensate staff in full (even though they are not working), can they still apply for unemployment?**

No. They are currently employed and thus do not fall into the unemployed category.

5. **When we are talking amounts and limits, are we talking gross or net pay?**

Under the paid sick leave act, when we say pay the regular rate or 2/3 the regular rate, we're talking about gross pay.