

# DOL Issues New Regulations Clarifying Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act

By: Nick Ziepfel on April 2, 2020 on [graydon.law](https://graydon.law)

Yesterday, the Department of Labor posted temporary regulations addressing how workers and employers will benefit from the protections and relief offered by the Emergency Paid Sick Leave Act (“EPSLA”) and Emergency Family and Medical Leave Expansion Act (“EFMLEA”), both included in the Families First Coronavirus Response Act (“FFCRA”). These temporary regulations are effective through December 31 and are generally duplicative of the DOL’s prior [Q&A Guidance](#) on the EPSLA and EFMLEA. Although these temporary regulations generally codify the DOL’s prior guidance, they go further to clarify *at least a few* of the questions that employers (and employment attorneys) have been facing the past fifteen days (yes the FFCRA is a whopping fifteen days old):

**“One Time Use” of Paid Sick Leave:** The DOL temporary regulations limit any employee to a total of 80 hours of paid sick leave under the EPSLA regardless of whether the employee changes employers. An employee who exhausts his or her leave and then changes employers will not receive additional paid sick leave. Similarly, an employee who takes a portion of his or her sick leave, and then changes employers, is entitled only to the remaining portion of paid sick leave (assuming the new employer is covered under the EPSLA).

**Paid Sick Leave to Care for an Individual:** An employee may take paid sick leave if the employee is unable to work because he or she needs to care for an individual who is either: (a) subject to a Federal, State, or local quarantine or isolation order; or (b) has been advised by a health care provider to self-quarantine due to reasons related to COVID-19. The DOL temporary regulations clarify that paid sick leave “may not be taken to care for someone with whom the employee has no personal relationship. Rather, the individual being cared for must be an immediate family member, roommate, or similar person with whom the employee has a relationship that creates and expectation that the employee would care for

the person if he or she self-quarantined or was quarantined.”

**Continuous Paid Leave to Care for a Minor Child:** The EFMLEA offers up to twelve weeks of limited paid leave to an employee who is unable to work to care for a minor child if the child’s school or place of child care has been closed or is unavailable due to a public health emergency. The EFMLA states that the first “ten days” of such leave is unpaid. Of course, the employee can use paid sick leave through the EPSLA during this unpaid period – up to “two weeks” of leave, capped at 80 hours. These two new laws work as intended when an employee works a typical eight-hour day, five days a week. But what about an employee who works three 12-hour days per week? Under this scenario, the DOL temporary regulations explain that the employee would be unable to receive paid EFMLEA leave at the end of two workweeks time because she “would have taken only six workdays of such leave, and the ten-day period of unpaid leave would still be in effect.” “To ensure consistency” between the EFMLEA and EPSLA, and to assure the employees in this scenario have access to continuous paid leave, the DOL clarified that the “unpaid period for expanded family and medical leave lasts for two weeks rather than ten days.”

**Notice of Leave:** To receive paid sick leave, employees must provide employers documentation that includes: (a) the employee’s name; (b) the date(s) for which leave is requested; (c) the COVID-19 qualifying reason for leave; and (d) a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason. The DOL’s temporary regulations state that employers may require employees provide such notice “as soon as practicable,” but no earlier than after the first workday is missed. The temporary regulations further provide that an employee may provide oral notice of leave and that employer must document all oral requests for leave. If an employee fails to give proper notice, the employer should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.

**Recordkeeping:** The DOL’s temporary regulations require an employer keep all documentation related to requests for leave under the EPSLA or EFMLEA for four years, regardless of whether leave was granted. The DOL temporary regulations further describe the records employers must keep (for four years) to receive the available tax credits for paid leave under the EPSLA or EFMLEA (more information regarding these tax credits can be read [here](#)).

These temporary regulations will help us continue to navigate these uncharted waters. Graydon’s employment attorneys are here to help your business stay the course with new policies, leave of absence forms, and counseling through the unexpected.

