

PUBLICATION

Coronavirus: DOL Issues Initial Q&A Guidance and Fact Sheet on the Families First Coronavirus Response Act

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Yesterday, the U.S. Department of Labor issued initial guidance in response to general questions posed by employers about the Emergency Family and Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA) of the Families First Coronavirus Response Act (FFCRA). You can read our previous alerts on the Families First Coronavirus Response Act [here](#) and [here](#). Today, the DOL released a Fact Sheet for employers that also provides helpful information, as well as a model notice employers may use to notify employees about these laws. The DOL is expected to issue regulations in April 2020, but the Fact Sheet and Q&A guidance clarifies certain aspects of the EFMLEA and EPSLA. Below are highlights from the Q&A, which is available on the DOL's COVID-19 and the Workplace webpage.

- The FFCRA is effective April 1, 2020.
- When calculating the 500-employee threshold, the employer should include:
 - All employees at the time leave is to be taken,
 - Full-time and part-time employees in the United States (i.e. states, the District of Columbia, and any territory or possession of the U.S.), and
 - Temporary employees, joint employees (regardless of whose payroll the employee is on), and day laborers supplied by a temporary agency (regardless of whether you are an agency or the client firm).
- When deciding whether aggregation is appropriate:
 - For the EPSLA, employers should consider the joint employer test to determine if they should aggregate employees of multiple entities.
 - For the EFMLEA, employers should consider the joint employer test *and* the integrated enterprise test. If either test is met, employers should aggregate the number of employees of the entities at issue.
- The FFCRA is not retroactive.
- Employers should include overtime hours when calculating an employee's rate of pay under EPSLA. Note that "pay does not need to include a premium for overtime hours."
 - Commissions, tips, or piece rates should be incorporated into the calculation of the regular rate of pay.
- An employee may take paid sick leave under the EPSLA *and* expanded family and medical leave under the EFMLEA to care for a child whose school or place of care is closed or unavailable due to COVID-19-related reasons. The EPSLA can cover the first ten workdays under the EFMLEA that

would otherwise be unpaid.

- An employee is considered employed for at least 30 calendar days if the employee was on the employer's payroll for 30 calendar days immediately prior to the day leave would begin. This includes any days the employee may have worked as a temporary employee.

Employers are encouraged to visit the DOL website for the Q&A, Fact Sheet, and the notice and to post the notice in a conspicuous place on the premises where notices are usually posted. If the facility is closed and employees are teleworking, employers should consider other alternatives to provide the notice, including email, electronic bulletins, and regular mail.

For more information, feel free to contact the authors or any [Baker Donelson Labor & Employment attorney](#), and please visit the [Coronavirus \(COVID-19\): What you Need to Know information page](#) on our website.