

4.8.2020

COVID-19 Daily Briefing Recap

Intermittent Leave Under the FFCRA

Please note that the following is a recap of our COVID-19 Daily Briefing from 4/8/2020. Due to the rapidly evolving nature of the pandemic, we recommend that you consult the most up to date materials possible. Visit Jackson Lewis P.C.'s [COVID-19 resource page](#) for updates on workplace impacts of the Coronavirus, and [sign up here](#) to receive invitations to future daily COVID-19 webinar briefings and updates on ongoing legal and workplace health challenges.

FFCRA Summary

Qualifying Reasons

1	Quarantine or Isolation Order	Orders must refer to a specific population who must stay at home (e.g. those 65 or older); an employee subject to such a state order is not required to produce an agency order directing the employee by name to stay home
2	Advised to Self-Quarantine	Healthcare provider advises employee to self-quarantine due to concerns related to COVID-19
3	Seeking Medical Diagnosis	Employee is experiencing COVID-19 symptoms and seeking a medical diagnosis; a medical provider must be involved
4	Caring for Another	Employee is caring for another individual subject to an order described in reason 1 or advised to self-quarantine as described in reason 2
5	School Closure or Lack of Child Care	Leave is available if the school or care option is not available due to COVID-19 and no other suitable person is available to care for the child, including co-parent, co-guardian or usual care provider
6	Substantially Similar Condition Specified by HHS	No such specified condition currently exists

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Benefits

Emergency Paid Sick Leave (EPSL)	<ul style="list-style-type: none"> ▪ Available for all six qualifying reasons listed above ▪ Up to 80 hours for full-time (defined only as 40 hours/week) ▪ Two weeks of normally scheduled hours for part-time (special calculation for those with varying schedule using six-month average)
Emergency Family Medical Leave (EFML)	<ul style="list-style-type: none"> ▪ Available only when employee's child's school or place of care is closed, or their child care provider is unavailable, because of COVID-19-related reasons ▪ 12 workweeks of EFML

Intermittent Leave Under the FFCRA

- Intermittent leave can only be taken by agreement between employee and employer.
- The agreement is not required to be in writing, but we recommend it.
- For qualifying reason 5 (school/care center closures), employees can take the entire amount of their EPSL or EFML intermittently in any agreed upon time increment.
- For qualifying reasons 1-4 or 6, employees using EPSL intermittently may not report to the worksite.
- Teleworking employees can agree to take EPSL leave intermittently for any qualifying reason and in any agreed upon increment of time, but only for those times when the employee is unavailable to telework due to a COVID-19-related reason.
- Only actual leave time taken can be counted against an employee's leave entitlement.

Follow-up Notes

- In response to a number of follow-up questions about quarantine or isolation orders that qualify for EPSL, we want to emphasize that these orders must refer to a specific population who must stay at home (e.g. those people age 65 or older). However, an employee subject to such a state order is not required to produce an agency order directing the employee by name to stay home.
- In response to a question asking if an employee can use EPSL during the first two weeks of EFML, the presenter said the EPSL could be used, but that there would be two different rates during the intermittent leave – 100% for the first two weeks and 2/3 for the remaining 10 weeks. The presenter misspoke – the entire 12-week period would be paid at 2/3 the employee's regular rate of pay, subject to applicable caps.

What if I have more questions?

As issues and concerns around Coronavirus COVID-19 unfold daily, employers must prepare to address the threat as it relates to the health and safety of their workforce. Keep up to date with [Jackson Lewis' latest available information and resources](#).

If you have any questions, please contact the Jackson Lewis attorneys with whom you regularly work.