

By Jeff Nowak of Littler

FMLA Insights

Guidance & Solutions for Employers

Need Model Policies and Forms for the New Emergency Paid Sick and Paid FMLA Leave? Here are the Details

By Jeff Nowak on April 9, 2020



Under the Families First Coronavirus Act (FFCRA), employers with fewer than 500 employees are required to provide paid sick leave (EPSL) and paid FMLA leave (FMLA+) for certain reasons related to the Coronavirus pandemic. The law went into effect April 1 and its obligations continue through December 31, 2020.

Employers need policies and forms to comply with this new law.

We now have these policies and forms ready for you.

Why Do You Need a New Policy and Forms to Comply with this New Law?

This new law is fraught with compliance issues for employers. Take, for instance, these risky scenarios for employers that do not document an employee's leave request:

- Your employee, Johnny, does not have symptoms of COVID-19 but insists that he needs to take off work to avoid any exposure. Is he eligible to take EPSL? If you and Johnny later dispute the reason for his need for leave, do you have a leave request form from Johnny to back up your story? Nope.
- One of your employees, Betty, sought FMLA+ for a COVID-19 related reason, but a dispute later arises over whether you improperly denied her intermittent leave to care for her child whose school was closed. You recall that she requested continuous leave, but you have nothing in writing confirming that fact.
- You require your employee, Gnarl, to exhaust his employer-provided PTO at the same time he is taking EPSL. After the fact, he claims that he did not give you approval to burn his accrued paid leave at the same time he was taking EPSL. You recall him telling you to apply his accrued leave, but you have nothing in writing to confirm. Is this a violation of the law?

This hastily-drafted law is a mess, and it undoubtedly will create liability for employers that fail to document the employee's request for EPSL or FMLA+. Employer compliance is made even more difficult because the Department of Labor has made clear that it will not be publishing model policy language or model forms for employers to use for EPSL or FMLA+.

This creates significant compliance risks.

Employers undoubtedly want to make their employees aware not only of their leave entitlement under this new law, but also the expectations for requesting and taking EPSL or FMLA+. Additionally, it also is critical that employers obtain in writing their employees' request for leave, including whether they are requesting intermittent leave (and why), whether they want other forms of paid leave to run instead of or concurrently with EPSL and FMLA+, among other important issues.

Our Solution

To meet this need, we have created **two** template policies (one policy for EPSL and another for FMLA+) and **four** template forms based on the law and the Department of Labor's published Questions & Answers, which were updated just this past week.

Specifically, we can provide the following to improve your compliance efforts:

Policies

1. Emergency Paid Sick Leave Act policy
2. Emergency Family and Medical Leave for Public Health Emergencies policy

Forms

3. Emergency Paid Sick Leave Act (EPSL) Leave Request and Notice Form
4. Emergency Family and Medical Leave Expansion Act (FMLA+) Leave Request and Notice Form
5. Notice of Eligibility for Emergency Family and Medical Leave Expansion Act (FMLA+) Leave and Rights and Responsibilities; and
6. Designation Notice for Emergency Family and Medical Leave Expansion Act (FMLA+)

If you are interested in obtaining these model policies and/or forms, please contact me at jnowak@littler.com for pricing.

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