



Agricultural Employers Guide to the Families First Coronavirus Response Act

May 2020

How can the Families First Coronavirus Response Act (FFRCA) help my farm workers?

FFRCA has two programs for offering paid leave to employees, both of which are reimbursable through refundable tax credits. These two options are either 80 hours of paid sick leave or 10 weeks of partially paid family/medical leave.

1. Emergency Paid Sick Leave Act (EPSLA): Covers up to 80 hours of paid sick leave for employees who are either: (a) experiencing COVID-19 symptoms and seeking a medical diagnosis; (b) subject to a quarantine or isolation ordered by a health care professional or government entity; or (c) needing to care for an individual subject to quarantine or isolation order.

Example uses:

- a. Cover the costs of quarantining agricultural workers arriving for the season from out of state prior the start of their work. In addition, if additional housing is required for a quarantine case this expense is covered under the Economic Injury Disaster Loan program which may be forgiven. For more information visit: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>
 - b. Cover the costs for an employee to get tested or recover from a diagnosis. **If additional leave over 80 hours is sought, consult the Family Medical Leave Act for potential coverage. For a complete FMLA employer guide please visit: <https://www.dol.gov/agencies/whd/fmla/employer-guide>*
2. Emergency Family Medical Leave Exemption Act (EFMLEA): Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical if the employee is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons.

What documentation is required?

The University of New Hampshire Cooperative Extension has created a FFCRA template to capture information below. The template can be found here: found here:

<https://www.maine.gov/dacf/covid19/docs/employee-documentation-needed-ffcra.pdf>

1. Get written documentation from the employee which includes:
 - The name of your employee requesting leave;
 - The date(s) for which leave is requested;
 - The reason for leave;
 - A statement from the employee that he or she is unable to work because of the reason; and

If the employee is accessing the Emergency Paid Sick Leave Act include:

- Document which government entity or health care provider gave them guidance that he or she or the person they are caring for is subject to a quarantine or isolation order.

Or if the employee is accessing the Emergency Family Medical Leave Exemption Act include:

- The name of the child being cared for;
 - The name of the school, place of care, or child care provider that has closed or become unavailable; and
 - A statement from the employee that no other suitable person is available to care for the child.
2. Be sure to include the following in your personnel files:
 - Basic payroll and identifying employee data, including: name, address, and occupation;
 - Rate or basis of pay and terms of compensation;
 - Daily and weekly hours worked each pay period; and
 - Additions to and deductions from wages, and total compensation paid.

Covered employer must keep records for no less than three years. Employers are not required to submit records to the Department of Labor unless specifically requested by a Department official.

How do I determine the compensation for my employee during leave?

Please refer to this U.S. Department of Labor Factsheet for compensation calculations:

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Am I exempt from providing EFMLEA?

A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- Employer employs fewer than 50 employees;
- Leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and
- At least one of the three conditions apply:
 1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
 2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; and/or
 3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

There is no form a business needs to file if you determine your business is exempt.

How do I request EPSLA and EMFLEA reimbursement?

Private sector employers that provide required paid sick leave and expanded family and medical leave are eligible for reimbursement of the costs of that leave through refundable tax credits. Many different tax scenarios are discussed here: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-how-to-claim-the-credits-fags#40>. Here are two relevant scenarios:

Q: How can an Eligible Employer that is required to pay qualified leave wages fund the payment of these wages if the Eligible Employer does not have sufficient federal employment taxes set aside for deposit to cover those payments? Can the employer get an advance of the credits?

A: Yes. Because quarterly returns are not filed until after qualified leave wages are required to be paid, some Eligible Employers may not have sufficient federal

employment taxes set aside for deposit to the IRS to fund their required qualified leave wages. Accordingly, the IRS has a procedure for obtaining an advance of the refundable credits.

The Eligible Employer should first reduce its remaining federal employment tax deposits for wages paid in the same quarter to zero. If the permitted reduction in deposits does not equal the qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages), the Eligible Employer can file a Form 7200, Advance Payment of Employer Credits Due to COVID-19, to claim an advance credit for the remaining qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) it has paid for the quarter for which it did not have sufficient federal employment tax deposits.

Form 7200 can be found here: <https://www.irs.gov/forms-pubs/about-form-7200>

Q: How does an Eligible Employer claim the refundable tax credits for qualified leave wages (plus any allocable qualified health plan expenses and the amount of the Eligible Employer's share of Medicare tax)?

A: Eligible Employers will report their total qualified leave wages and the related credits for each quarter or annual federal employment tax returns, usually Form 941, or 943 respectively. These forms are used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's portion of social security and Medicare tax.

In anticipation of receiving the credits, Eligible Employers can fund qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS or by requesting an advance from the IRS.

For more information visit: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

Additional information on EFMLEA and EPSLA:

Families First Coronavirus Response Act: Questions and Answers:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

U.S. Department of Labor, Wage and Hour Division Hotline: 1-866-487-9243

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What if my employee doesn't have health insurance? Are there any free health care providers?

The **Maine Mobile Health Program** is a statewide federally qualified health center (FQHC) providing health insurance counseling and access to primary and preventive care (including prescription assistance and access to COVID-19 testing) for migrant and seasonal farmworkers. Fees are on a sliding scale, and many farmworkers will pay a nominal (\$5) fee. The contact number is **1-888-351-9634** and assistance is available in English, Spanish or Haitian-Creole. Leave a voicemail with the nature of your concern and you will receive a call back. If calling overnight, on Friday or the weekend, a nurse triage line will take the call. If it is a medical emergency, call 911.

Other Resources for Employers:

Additional healthcare, housing, and legal services for agricultural employers can be found on the Farm Labor Link Network: <https://www.maine.gov/dacf/ard/farmlabor/>.