Decisionmaker’s guide to the intersection of EFMLA, EPSL, FMLA, and ADA.

Start here if you’re a private employer

Do you have <500 EEs?

No

EFMLA and EPSL don’t apply to you.

Yes

Is the employee seeking leave related to COVID-19?

Yes. Why?

Start here if you’re a public agency

Start here if you employ a health care provider

According to guidance from the Department of Labor, you have the option to exempt any of your employees. Read this, and this, talk to counsel, decide whether to go on.

Are you a private employer?

Yes

EFMLA and EPSL don’t apply to this employee’s request.

No

Emergency Paid Sick Leave

Is the employee full time or part time?

Full time employee can take <80 hours of paid leave…

Part time employee can take two weeks average hours of paid leave…

…at their regular rate if leave is for Reasons 1, 2 or 3, capped at $511 per day/$5,110 aggregate.

…at 2/3 their regular rate if leave is for Reasons 4, 5, or 6*, capped at $200 per day/$2,000 aggregate.

Employee can take up to 12 weeks of EFMLA. Counts against 12 week FMLA bank. Days 1 – 10 are unpaid unless by employee’s PTO or EPSL. Days 11+ are paid at 2/3 the employee’s regular rate of pay, not to exceed $200 per day, $10,000 aggregate. Employee can supplement missing 1/3 of paycheck with accrued PTO per employer’s usual policy.

Do you have <50 EEs?

Would providing EPSL or EMLA leave under Reason 5 jeopardize the viability of your business as a going concern? Read Department of Labor’s guidance here and here.

You might be exempted from providing EPSL or EFMLA leave under Reason 5.

COVID-19 appears a serious health condition under regular FMLA. The employee may be entitled to unpaid leave after EPSL runs out, or otherwise to care for another with COVID-19.

Don’t forget about ADA either. Read EEOC on ADA and COVID-19 here.

Questions? pbolling@woodsrogers.com

*Reason 6: If an employee seeks leave because they are experiencing “substantially similar condition” specified by HHS, DOL, and Treasury, they are entitled to EPSL leave. HHS, DOL, and Treasury have not yet specified. This is a general guide; you should consult counsel.