



State & Federal Leave Programs

Making Sense of the Rapidly Changing COVID-19 Landscape

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Today's Presenters

Marti Cardi, Esq

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Matrix Absence Management

Marti Cardi has leveraged a legal career of studying, interpreting, and indeed shaping US employment law to inspire and drive forward Matrix's market leading product development and service delivery.

As Vice President, Product Compliance, Marti ensures Matrix clients and their employees are informed, advised and - most importantly - well served by Matrix's services and business processes in the face of ever-changing industry regulation. A nationally known speaker and author, Marti is the founder, lead author, and executive editor of *Matrix Radar*, an industry blog bringing commentary and clarity to employers and absence and benefits professionals nationwide.



Karen Joseph

Practice Leader

Reliance Standard Life Insurance Company

Karen Joseph is an experienced Absence Management Practice Leader with a demonstrated history of working in the absence management industry. Utilizing her passion and skills with Federal FMLA, State Leave, ADA, and Employee Handbooks compliance, she has worked with many large and small employers helping them with navigating the absence world. Karen earned her MBA focused in Project Management from Southern New Hampshire University as well as her MS in Organizational Leadership and MS in Human Resources from Mercy College.



The new state and federal laws relating to COVID-19 are complex and evolving. This presentation provides our best information and interpretations as of publication, but amendments to the laws and interpretations may vary over time. Always check a direct source for the most up-to-date information.



Today's Agenda

01 So...What's New?

02 Families First Coronavirus Act

03 Emergency Paid Sick Leave

04 Emergency Family and Medical Leave Expansion Act

05 New York COVID-19 Paid Sick (Quarantine) Leave

06 COVID-19 State PFML Updates

07 Scenarios

08 Resources



01

So...What's New?



COVID-19 and “Regular” FMLA

So...What’s New?
(and what isn’t).

What It’s Not	Regular FMLA does NOT cover: <ul style="list-style-type: none"> • Quarantines of employee or family member • Seeking a diagnosis • School/day care closures
Serious Health Condition – Employee or Family Member	A diagnosis does not automatically constitute a serious health condition Still need to meet one of the several definitions of SHC
Regular FMLA Rules Still Apply	In-person visits to HCP Eligibility: 12 months, 1250 hours, 50EEs/75 miles Employer and employee notices
Entitlement is the Same	12 weeks per 12-month period Unpaid



02

Families First Coronavirus Response Act



Families First Coronavirus Response Act (FFCRA)

Applicable to **BOTH**
EPSL & EFML

The Terms	Emergency Paid Sick Leave Act “EPSL”
	Emergency Family and Medical Leave Expansion Act “EFML”
Effective Dates	April 1, 2020 through December 31, 2020
Covered Employers	Employers with fewer than 500 employees <ul style="list-style-type: none"> • Counted as of date each employee’s leave begins • Separate corporations = separate employers • Exceptions: <ul style="list-style-type: none"> • Integrated employers • Joint employers
	Public employers of any size
Covered Employees	Includes FT, PT, employees on leave (but not on furlough), joint employees and day laborers placed by agency



Families First
Coronavirus
Response Act
(FFCRA)

Applicable to **BOTH**
EPSL & EFML

Group Health Plans

Employer must maintain employee coverage on same conditions as if employee was working

Can make changes applicable to all employees

Prohibited Acts

EPSL: No discharge, discipline, or discrimination because employee took leave or filed a complaint

EFML: Same protections against interference and retaliation as under FMLA



Families First
Coronavirus
Response Act
(FFCRA)

Applicable to **BOTH**
EPSL & EFML

Job Protection

Restoration after leave to same or equivalent position

Key employee exemption applies

Small business exemption (fewer than 25 employees)

- ONLY available for leave due to school closures/daycare reason
- Position was eliminated due to COVID-19
- Employer must attempt to reinstate employee to equivalent position for 1 year



Families First
Coronavirus
Response Act
(FFCRA)

Applicable to **BOTH**
EPSL & EFML

Availability of Work

Paid leave is not available if employer’s business is closed

If employee is on paid leave and business closes, paid leave stops

Telework

Work that employer permits or allows employee to perform from home or other location, not at worksite

Employer and employee must agree to telework
But if telework is available and employee declines, no FFCRA benefits

Performed during normal work hours or other hours as agreed by employer and employee



Families First
Coronavirus
Response Act
(FFCRA)

Applicable to **BOTH**
EPSL & EFML

Employer Notice to Employee	Posting in workplace or make available to employees electronically
Employee Notice of Leave	No advance notice can be required
	Employee must give notice after first workday of leave
	Thereafter, notice as soon as practicable
	Oral notice with sufficient info for employer to determine coverage is enough
	Employer cannot require more documentation than specified in regulations
	Can require employee to comply with employer’s usual policies regarding absences



Families First
Coronavirus
Response Act
(FFCRA)

Applicable to **BOTH**
EPSL & EFML

Not Retroactive

Paid leave provided by employer prior to April 1, 2020, does not count toward employer's EPSL or EFML obligations

Employees not entitled to EPSL or EFML pay for unpaid leave taken for covered reasons prior to April 1st



Families First
Coronavirus
Response Act
(FFCRA)

Applicable to **BOTH**
EPSL & EFML

**Small Business
Exemption**

Available **ONLY** for leaves due to school closures

Employers with fewer than 50 employees

Compliance would “jeopardize the viability of the business as a going concern”

Authorized officer must determine one of 3 situations exists relating to providing leave:

- Financial obligations exceeding revenues OR
- Specialized skills, knowledge, or responsibilities of employees requesting leave OR
- Insufficient workers available to perform the work of employees requesting leave

Must retain documentation of determination



Families First
Coronavirus
Response Act
(FFCRA)

Applicable to **BOTH**
EPSL & EFML

**Exemption for
Health Care
Providers and
Emergency
Responders**

Employers can elect to exclude HCPs and ERs from coverage

Applies to all EPSL and EFML reasons

“Health Care Provider” defined very broadly; different from FMLA for certifications and EPSL definition for quarantines

“Emergency Responder” defined very broadly

Includes support personnel necessary to maintain operations and facilities

No specific procedures or records



Families First
Coronavirus
Response Act
(FFCRA)

Applicable to **BOTH**
EPSL & EFML

Tax Credit	Covered employers can claim 100% tax credits for wages paid as required by EPSL and EFMLA
	Includes any qualified health plan expenses and employer’s share of Medicare tax on the FFCRA wages paid
	Credit is allowed against the social security taxes owed by the employer
	If amount of credit exceeds the employer’s SS taxes, excess is treated as an overpayment and refunded to the employer
	Must support the tax credits with the documentation described below
	Details on how to claim the tax credit are available in the IRS guidance



03

Emergency Paid Sick Leave

Emergency Paid Sick Leave

EPSL

Eligible Employees

All employees, no eligibility requirements

Entitlement

- Full-time employees (works 40 or more hours per week): 80 hours
- Part-time employees: 2 weeks' equivalent pay
- This is the max entitlement PER EMPLOYEE
 - Not per event or per employer

Amount of Pay

- 100% for qualifying reasons #1-3 (following slide), up to \$511 daily and \$5,110 total
- 2/3 pay for qualifying reasons #4-6 (following slide), up to \$200 daily and \$2,000 total

Rate of Pay

- Higher of:
 - Employee's average regular rate
 - Fed, state, or local minimum wage applicable to the employee



Emergency Paid Sick Leave

Employee can take leave if he/she:

1.



Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19

2.



Has been advised by a health care provider to self-quarantine related to COVID-19

3.



Is experiencing COVID-19 symptoms and is seeking a medical diagnosis

4.



Is caring for an individual subject to an order described (1) or self-quarantine as described in (2)

5.



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

6.



Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services

* Child under 18, or over 18 and incapable of self care due to a disability



Emergency Paid Sick Leave

Key Definitions

“Health Care Provider”

To provide recommendation of self-quarantine, same definition as regular FMLA

“Individual”

Employee’s immediate family member

A person who resides in employee’s home

Relationship that creates an expectation that the employee would care for the person if quarantined

Employee must have a “personal relationship” with the individual



Emergency Paid Sick Leave

Documentation –
Employer must have
documentation to qualify
for tax credit

For ALL Paid Sick Leave Reasons

WRITTEN request for paid leave that includes:

1. The employee’s name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.



Emergency Paid Sick Leave

Additional Documentation

Leave for quarantine order or medical advice to self-quarantine for employee or a family member

Name of the governmental entity ordering or provider advising self-quarantine

Name and relation to the employee, if leave relates to a family member quarantine.

Leave for school closing or child care provider unavailability

Name and age of the child(ren) to be cared for

Name of the school or place of care

A representation that no other person will be providing care during the period for a leave

Needed for tax credit: Regarding care for a child older than 14 during daylight hours, a statement that “special circumstances” exist requiring the employee to provide care



Emergency Paid Sick Leave

Intermittent Leave

<p>At Worksite</p>	<p>Once leave starts, employee must take leave consecutively until leave reason ends</p>
<p>Exception</p>	<p>Leave due to school closure or child care unavailability Employer and employee must agree on availability and schedule</p>
<p>Later Use</p>	<p>If employee doesn't use all EPSL for one reason, may use remainder later for another event</p>
<p>Telework</p>	<p>Intermittent time OK in any increment agreed to by employer and employee But employee must be unavailable during leave hours due to covered COVID-19 reason</p>



04

Emergency Family and Medical Leave Expansion Act



Emergency Family and Medical Leave Expansion Act

EFML

Eligible Employees	Worked for employer for 30 calendar days prior to leave
Leave Reason	Employee is unable to work (or telework) due to a need to care for the employee’s child* if the child’s school or place of care has been closed or the child care provider is unavailable due to COVID-19 (“school closure”) * Child under 18, or over 18 and incapable of self care due to a disability
Concurrent with EPSL	If EPSL hasn’t been used up for other covered leave reasons prior
Documentation	Same as for school/place of care closure under EPSL – see above
EFML Procedures	New poster satisfies employer notice obligations No eligibility, designation, R&R notices required



Emergency Family and Medical Leave Expansion Act

EFML

Entitlement	Counts as part of regular FMLA 12-week entitlement
	Only 12 weeks of EFML total; no replenishment if roll into a new leave year
Amount of Pay	Unpaid for first 10 days of EFML
	Can use EPSL if not already used for other reasons
	2/3 of employee's regular rate of pay for remainder of EFML/FMLA entitlement <ul style="list-style-type: none"> • Up to 10 weeks • Capped at \$200/day and \$10,000 total
Intermittent Leave	Available if employer and employee agree, in any increments or schedule



05

New York COVID-19 Paid Sick (Quarantine) Leave



New York Paid Sick (Quarantine) Leave

NY PSL



Eligible Employees	All employees working in New York
Covered Employers	All private & public employers
Effective Date	March 18, 2020
Leave Reasons	Employee or employee’s minor dependent child is the individual subject of a “mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19”
Able to Work	NY benefits not available if employee is able to work during quarantine remotely or otherwise



New York Paid Sick (Quarantine) Leave

NY PSL - Benefits



Employers with 1-10 Employees and Net Income Less than \$1M

Employee quarantine:

- No required paid sick leave
- Enhanced Paid Family Leave (PFL) and statutory disability benefits

Child quarantine:

- PFL benefits under new quarantine reason

- **Employers with 1-10 Employees and Net Income Greater than \$1M**
- **Employers with 11-99 Employees**

Employee quarantine:

- 5 calendar days of sick leave paid by employer
- Enhanced Paid Family Leave (PFL) and statutory disability benefits

Child quarantine:

- PFL benefits under new quarantine reason



New York Paid Sick (Quarantine) Leave

NY PSL - Benefits



Employers with 100 or more employees, and State & Public Employers of any size

Employee quarantine:

- 14 calendar days of sick leave paid by employer
- No enhanced PFL/disability benefits
- Regular statutory disability benefits if employee meets the definition of “disability”

Child quarantine: No PFL available for child quarantine under new quarantine reason



New York Paid Sick (Quarantine) Leave

NY PSL



Determining Employer Size

- Includes all of a company's employees
- Not just NY employees
- Measured as of January 1, 2020

Determining Net Income

Based on net income in the 2019 calendar year



New York Paid Sick (Quarantine) Leave

NY PSL



Measuring 5 or 14 Days

Pay for the number of days the employee would normally work in this number of calendar days

Enhanced PFL/DBL Benefits (Available only for Employee's Own Quarantine)

PFL pays up to 60% of employee's pay; max weekly benefit of \$840.70 in 2020

Simultaneous with the PFL benefit, employee can receive disability benefits up to max weekly disability benefit of \$2,043.92

Total maximum benefit \$2,884.62 per week (capped at employee's full wages)



New York Paid Sick (Quarantine) Leave



PFL Eligibility	Employee must still meet usual eligibility requirements for PFL
	Work 20 or more hours per week: 26 weeks of work for employer
	Work fewer than 20 hours per week: 175 days of work for employer
Waiting Period	<ul style="list-style-type: none"> • Usual 7-day waiting period for disability is waived for COVID-19 quarantine • No waiting period for PFL
Total PFL/Disability Benefits	<p>Benefits due to a COVID-19 quarantine are part of the usual limits in a 52-week period:</p> <ul style="list-style-type: none"> • 10 weeks of PFL in 2020 • 26 weeks of disability • Total of 26 weeks for both benefits



New York Paid Sick (Quarantine) Leave

NY PSL –
Qualifying Order
of Isolation or
Quarantine



Authority	Order must be issued by state of New York, the Department of Health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19
Individualized	Order must be directed specifically to the employee or employee’s minor dependent child
NY “PAUSE” Order	Gov. Cuomo’s order for nonessential workers to work from home/shelter in place does NOT qualify
Obtaining an Order	Employee must provide copy of order to employer; follow up with local health department if not “immediately available”



New York Paid Sick (Quarantine) Leave

NY PSL



Multiple Quarantines

Total of 5 or 14 days of paid sick leave is payable only one time

No new entitlement for multiple quarantines

Enhanced PFL and disability benefits available for more than one quarantine

Interplay with Other Benefits

NY paid sick leave is secondary to FFCRA benefits

NY benefits can be offset against STD plan benefits per terms of plan



New York Paid Sick (Quarantine) Leave

NY PSL



Job Protection

Exists for duration of quarantine order

Reinstatement to same position

No discrimination or retaliation against employee for exercising rights



06

COVID-19 State PFML Updates



COVID-19 State PFML Updates

California



Disability Insurance: Available if employee is unable to work due to having or being exposed to COVID-19 (certified by a medical professional).

One-week elimination period is waived on DI claims for individuals who are disabled as a result of COVID-19

Paid Family Leave: Available if employee is caring for an ill or quarantined family member with COVID-19

https://www.edd.ca.gov/about_edd/coronavirus-2019.htm



COVID-19 State PFML Updates

Hawaii



Temporary Disability Insurance: Available if the employee is ill or quarantined because of COVID-19. Waiting period still applies

https://labor.hawaii.gov/ui/files/2020/03/COVID-19-Labor-Benefits-Fact-Sheet_20200319.pdf



COVID-19 State PFML Updates

New Jersey



Temporary Disability Benefits and Family Leave Insurance:

Definitions of “serious health condition” and “sickness” expanded to include employee’s or family member’s need to quarantine due to COVID-19

7-day TDB waiting period is waived for COVID-19 claims

<https://www.nj.gov/labor/worker-protections/earnedsick/covid.shtml>



COVID-19 State PFML Updates

New York



In addition to new paid sick/quarantine leave:

Paid Family Leave: Definition of “serious health condition” expanded to include a diagnosis of COVID-19; effective for 90 days from filing on March 27, 2020 (until June 25, 2020)

<http://www.wcb.ny.gov/content/main/wclaws/Covid-19SeriousHealthCondition/>



COVID-19 State PFML Updates

Rhode Island



Temporary Disability Insurance and Temporary Caregiver Insurance:

7-day waiting period is waived for all COVID-19 related claims

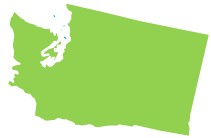
Employees can temporarily qualify for benefits via self-attestation that they (or their dependents) are under quarantine due to COVID-19

<http://www.dlt.ri.gov/pdfs/COVID-19%20Workplace%20Fact%20Sheet.pdf>



COVID-19 State PFML Updates

Washington



No Changes



07

Scenarios



NEW YORK

Claim scenario

1

NY COVID-19 Paid Sick Leave = 5 Days
FFCRA = 100% Pay

Employee who makes \$50,000/year (\$962/wk, or \$192/day), works 5 days/wk in NY for an Employer with 90 EEs, and meets eligibility requirements for NY DBL and PFL and FFCRA, and is covered under an STD plan (60% to \$1000/wk max, no minimum benefit) with a 7 day elimination period.

EE receives COVID-19 dx and is in quarantine for 20 days and out of work for 30 days in total

Days	1 – 5	6 – 7	8 – 14	15 – 20	20 – 30+
FMLA	Unpaid/Job Protected Leave for Own Serious Health Condition if Applicable				
FFCRA / EPSL	Employer pays \$192/day PSLA				
FFCRA / EFML	N/A				
NY PAID SICK	\$0 due to FFCRA offset				
STD	\$0 during STD elimination period		\$0 due to FFCRA & DBL/PFL		\$577/wk (if disabled)
NYDBL / NYPFL		\$0 due to FFCRA offset		\$926/wk	n/a (unless ee has SHC and applies for DBL benefit)



NEW YORK

Claim scenario 2

NY COVID-19 Paid Sick Leave = 14 Days
FFCRA = 100% Pay

Employee who makes \$50,000/year (\$962/wk, or \$192/day), works 5 days/wk in NY for an Employer with 300 EEs, and meets eligibility requirements for NY DBL and PFL and FFCRA, and is covered under an STD plan (60% to \$1000/wk max, no minimum benefit) with a 7 day elimination period.

EE receives order for precautionary quarantine; goes out for 14 days then receives positive dx so gets mandatory quarantine for next 14 days. Sick and unable to work until RTW on Day 29.

Days	1 – 5	6 – 7	8 – 14	15 – 20	20 – 30+
FMLA	Possibly FMLA from Day 1 for Own Serious Health Condition (unpaid)				
FFCRA / EPSL	Employer pays \$192/day PSLA				
FFCRA / EFML	N/A Reason not Covered				
NY PAID SICK	\$0 due to FFCRA offset				
STD	N/A Not yet Disabled			\$0 (7 day elim) through day 21	\$407/week through day 28 due to DBL offset
NYDBL	N/A Not yet Disabled			\$170/wk under “regular” DBL program (through day 28)	
NYPFL	N/A Due to Employer Group Size				



CALIFORNIA
Claim
 scenario 3

FFCRA = 100% Pay
 CA UCD = 60% wages to
 \$1300/wk max

Employee who makes
 \$50,000/year (\$962/wk, or
 \$192/day), works 5 days/wk in
 CA for an Employer with 450
 EEs, and meets eligibility
 requirements for FMLA, FFCRA,
 CA SDI, and is covered under an
 STD plan (60% to \$1000/wk
 max, no minimum benefit) with
 a 7 day elimination period.

EE is sick and unable to work due to COVID-like symptoms; receives positive dx on day 7 and then is home sick and on mandatory quarantine for next 14 days.

Days	1 – 5	6 – 7	8 – 14	15 – 20	20 – 30+
FMLA	Possibly FMLA from Day 1 for Own Serious Health Condition (unpaid) extended after 14 days if certified				
FFCRA / EPSL	Employer pays \$192/day				
FFCRA / EFML	N/A				
CA Statutory Disability (SDI)	\$0 (SDI waiting period waived however FFCRA EPSL offset applied)			\$577/wk	
STD	\$0 (during 7 day elimination)		\$0 after offset for FFCRA	\$0 after offset for SDI	



NEW JERSEY

Claim scenario 4

NJ TDI = 66 2/3% wages to \$667/wk max (through 6/30/20)

Employee who makes \$50,000/year (\$962/wk, or \$192/day), works 5 days/wk in NJ for an Employer with 750 EEs, and meets eligibility requirements for NJ TDI and PFL, and is covered under an STD plan (60% to \$1000/wk max, no minimum benefit) with a 7 day elimination period.

EE is sick and unable to work due to COVID-like symptoms; receives positive dx on day 7 and then is home sick and on mandatory quarantine for next 14 days.

Days	1 – 5	6 – 7	8 – 14	15 – 20	20 – 30+
FMLA	Possibly FMLA from Day 1 for Own Serious Health Condition (unpaid)				
FFCRA / EPSL	N/A Employer not Eligible				
FFCRA / EFML	N/A Employer not Eligible nor Reason Covered				
NJ Temporary Disability Insurance (TDI)	\$641/wk (TDI waiting period waived if under order from health care provider or authority to quarantine so as not to jeopardize health of others)				
STD	\$0 (during 7 day elimination)		\$0 after offset for NJ TDB		



TEXAS

Claim scenario 5

FFCRA = 2/3 Pay Rate, max of \$200/Day

Employee who makes \$50,000/year (\$962/wk, or \$192/day), works 5 days/wk in TX for an Employer with 450 EEs, and meets eligibility requirements for FMLA and FFCRA, and is covered under an STD plan (60% to \$1000/wk max, no minimum benefit) with a 7 day elimination period.

EE's dependent child's daycare is closed due to COVID-19 and the employee does not have work from home options or another individual to care for the child for 12 weeks

Week	Week 1 – 2	Week 3 – 12
FMLA	Not Applicable	
FFCRA / EPSL	Employer Pays \$128/day	
FFCRA / EFML	Unpaid first 2 weeks / sup with PSLA or PTO	Employer Pays \$128/day
STD	N/A	



08

COVID-19 Resources

COVID-19 Resources

Matrix Radar – absence and disability industry blog: <http://matrix-radar.com/>

➤ Sign up for email notices and check in daily

Reliance Standard – Our Response to COVID-19:
<http://www.reliancestandard.com/Our-Response-to-Coronavirus-COVID-19/3233/>

Reliance Standard COVID-19 FAQs – updated as developments occur:
http://www.reliancestandard.com/SiteData/docs/FAQ0326202/97633ef8f0775795/FAQ_03262020.pdf

COVID-19 Resources

FFCRA: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

DOL COVID-19 page with links:
<https://www.dol.gov/agencies/whd/pandemic>

Regulations:

<https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>

Q&As: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Poster:

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster WH1422 Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

IRS Tax Guidance: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

COVID-19 Resources

New York

New York COVID-19 website:

<https://paidfamilyleave.ny.gov/covid19>

If You are Quarantined:

<https://paidfamilyleave.ny.gov/if-you-are-quarantined-yourself>

If Your Minor Dependent Child is Quarantined:

<https://paidfamilyleave.ny.gov/if-your-minor-dependent-child-quarantined>

Obtaining an Order:

<https://paidfamilyleave.ny.gov/system/files/documents/2020/03/obtaining-order-of-quarantine.pdf>