



RUSING LOPEZ

& LIZARDI
ATTORNEYS AT LAW

PAID LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

April 1, 2020

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Speaker

- Kate is experienced in the areas of employment defense, employment advice and counsel, complex commercial dispute resolution, and outside general counsel duties.
- Kate's practice includes state and federal regulatory matters, litigation, arbitration, and state and federal agency matters.
- Kate regularly advises clients regarding employment policies and practices, including compliance with federal, state, and local employment statutes and regulations.



Roadmap

1. Arizona Paid Sick Leave
2. Families First Corona Virus Response Act
3. Emergency Paid Sick Leave Act
4. Emergency Family and Medical Leave Expansion Act
5. FAQs
6. Q & A

Arizona Paid Sick Leave

- **Paid Sick Leave depends on employer size:**
 - **Companies with Less Than 15 Employees – 24 hours of paid sick leave/year**
 - **Companies with 15 or More Employees – 40 hours of paid sick leave/year**
- **Applicable to full time, part-time, seasonal, & temporary employees**
- **Minimum one hour off for every 30 hours worked**

Arizona Paid Sick Leave

Earned paid sick time may be used for the following purposes:

- (1) medical care or mental or physical illness, injury, or health condition; or
- (2) public health emergency;
- (3) absence due to domestic violence, sexual violence, abuse, or stalking.

** Employees may use earned paid sick time for themselves or to care for family members.

Arizona Paid Sick Leave

- Closure of the employee's place of business by order of a public official due to a public health emergency
- Care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or
- Care for self or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease

Arizona Paid Sick Leave



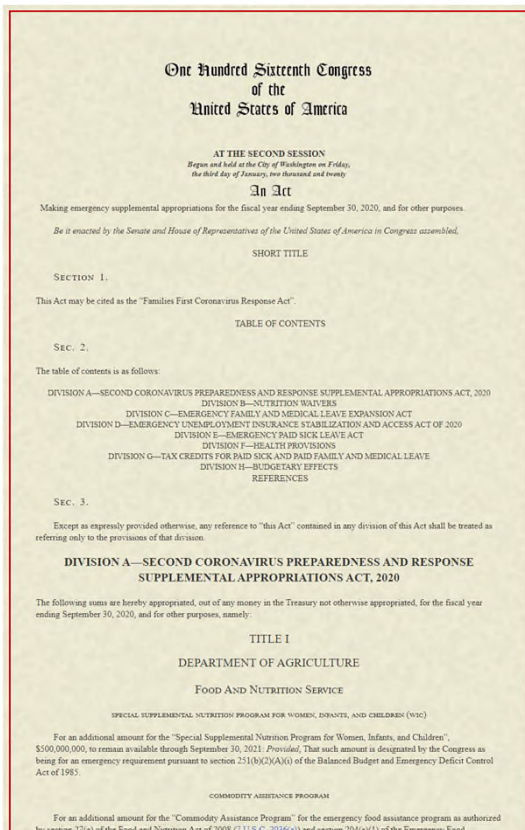
Executive Orders

<https://azgovernor.gov/executive-orders>

- **Executive Order 2020-09: Limiting Operations of Certain Businesses to Slow the Spread of COVID-19**
- **Executive Order 2020-12: Prohibiting the Closure of Essential Services**
- **Executive Order 2020-18: Stay Home, Stay Healthy, Stay Connected**

Families First Coronavirus Response Act

- Emergency Paid Sick Leave Act
- Emergency Family and Medical Leave Expansion Act



Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Covered Employers

Private employers with fewer than 500 employees (1-499).

Calculating Employees

- Count all employees, even those on leave, part-time, temporary
- Multiple Entities?
 - Joint employer standard
 - Integrated employer standard

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Small Business Exemption

- Fewer than 50 employees
- Only available where leave is to care for child whose school or care provider has been closed
- Paid leave would “jeopardize the viability of the business as a going concern”
- Authorized officer of the business has determined that:
 - Paid leave would result in the business’s expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
 - The absence of employee(s) requesting paid leave would entail a substantial risk to the financial health or operational capabilities of the business because of their specialized skills, knowledge of the business, or responsibilities; or
 - Insufficient 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(s) requesting paid leave, and these labor or services are needed for the business to operate at a minimal capacity

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Effective Date

- April 1, 2020 (through December 31, 2020)
- Any leave taken prior to this date is **NOT** counted toward leave under this Act.

Temporary Non-Enforcement

- Through April 17, 2020, IF employer has made reasonable, good faith efforts to comply, DOL will not bring an enforcement action
- Does **NOT** prevent employees from bringing private action

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Eligible Employees

- **EPSLA:** All employees from first day of employment.
- **EFMLEA:** All employees that have been on payroll for 30 days.
- **Exemption for health care providers and emergency responders**
- **Rehired employees (if laid off on or after March 1 and had worked for at least 30 of the 60 days prior to layoff)**

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Duration

- **EPSLA**
 - 80 hours for full-time employees
 - Equivalent of two weeks for part-time employees
- **EFMLEA: Twelve weeks***

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Uses

- EPSLA (shorter duration)
 1. Employee is unable to work or telework because employee is
 - a) subject to a quarantine/isolation order related to COVID-19;
 - b) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
 - c) is experiencing symptoms of COVID-19 and is seeking medical diagnosis.
 2. Employee is caring for an individual who is subject to quarantine/isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 3. Employee is caring for a child whose school or place of care is closed due to COVID-19.

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Uses

- EFMLEA (longer duration)
 1. Employee is caring for a child whose school or place of care is closed due to COVID-19

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Compensation

- **EPSLA**
 - If caring for self, regular rate of pay up to \$511/day (\$5,110 max)
 - If caring for others, 2/3 of regular rate of pay, up to \$200/day (\$2,000 max)
- **EFMLEA**
 - First two weeks unpaid (may use other paid leave)
 - Remaining ten weeks, 2/3 of regular rate of pay up to \$200/day (\$12,000)

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Existing Policies/Concurrent Use

- In addition to Arizona paid sick leave
- In addition to any other existing PTO policy
- Must allow but cannot force employee to use existing leave first
- Must allow employee to use EPSLA for the first two weeks of EFMLEA
- May allow, but cannot force to use existing PTO concurrently (e.g. to make up pay difference)
- EFMLEA and FMLA = total 12 weeks

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Documentation

- Retain “appropriate documentation” to qualify for tax credits – IRS forms
- EFMLEA leave – notice of closure of school or day care, email from school official, tweet from the governor?
- Existing FMLA documentation requirements unaffected

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Tax Credits

- Employers may receive tax credits in the amount paid to employees under EPSLA and EFMLEA
- Tax credits only for leave between April 1, 2020 and December 31, 2020
- Tax credits only for capped amounts
- Tax credits only for eligible leave
- Tax credits allow for \$ for \$ offset and refunds of overpayments
- Additional tax credits for health insurance costs for employee on leave
- DOL/IRS will issue guidance for adjusting/retaining federal payroll tax withholdings and to seek accelerated payments from the IRS

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Intermittent Leave

- May allow intermittent leave where reasonable
- Teleworkers
 - Any increment (DOL example, 90 minutes on/off)
- Worksite
 - Depends on reason for leave
- DOL “encouraging” employers to be flexible and work collaboratively

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Notice of Use

- If foreseeable notice is whatever is “practicable”
- After the first workday of paid sick time, may require employee to follow reasonable notice procedures in order to continue receiving paid leave

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Prohibitions

- Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Closures/Furloughs/Business Interruption

- Employers that lay off or furlough employees prior to April 1 have no obligation to pay employees for leave
- Employers that lay off or furlough employees prior after April 1 have no obligation to pay employees for leave (as long as action was not retaliation)
- Employers that close due to lack of business or pursuant to a federal or state order are not obligate to continue paying

****subject to state protected leave law**

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

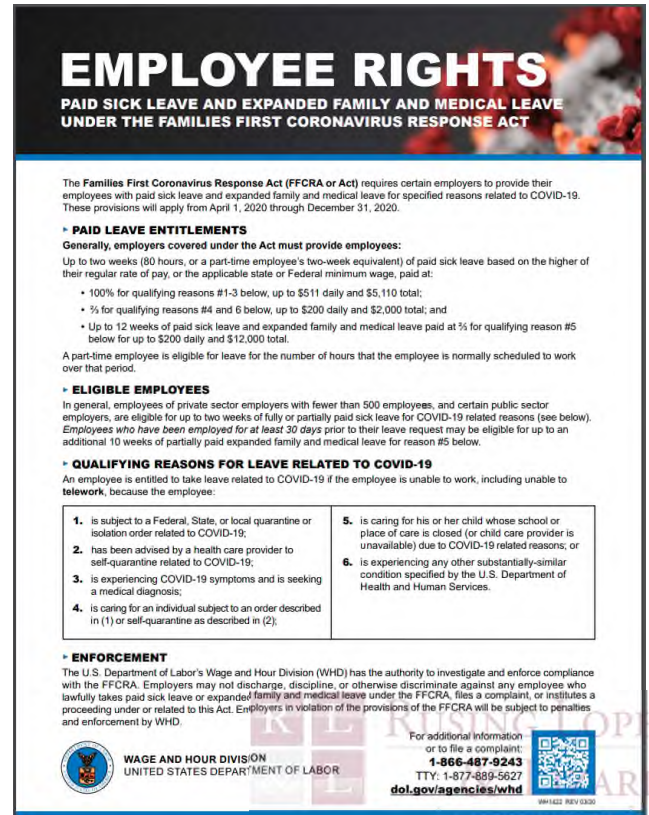
Health Insurance/Benefits

- Employees who take EPSLA or EFMLEA leave are entitled to keep their group health coverage as if they were working
- Employees who do not return to work may be entitled to coverage pursuant to COBRA or Arizona's mini-COBRA

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Notice of Rights

- Employers must post notice of rights in a conspicuous place on premises
- “An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.”



EMPLOYEE RIGHTS
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE
UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

• **PAID LEAVE ENTITLEMENTS**
Generally, employers covered under the Act must provide employees:
Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.



• **ELIGIBLE EMPLOYEES**
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). 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 leave for reason #5 below.

• **QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;	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, or
2. has been advised by a health care provider to self-quarantine related to COVID-19;	6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;	
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);	

• **ENFORCEMENT**
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

For additional information or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WHD
UNITED STATES DEPARTMENT OF LABOR
WHFACG REV 03/20

Emergency Paid Sick Leave Act & Emergency Family and Medical Leave Expansion Act

Department of Labor

<https://www.dol.gov/agencies/whd/pandemic>

IRS

<https://www.irs.gov/coronavirus>

OSHA

<https://www.osha.gov/SLTC/covid-19/>

EEOC

<https://www.eeoc.gov/>

FAQs

The following are examples of common questions that arise under the Arizona Paid Sick Leave Act and the leave provisions of the FFCRA. The responses are general responses based on the language of the statutes. The following does not constitute legal advice, and you should consult with your legal counsel to discuss your individual situation.

FAQs

- **If my business is closed by order of a public official, must I pay employees for leave?**
- **If my business is closed by order of a public official, may I terminate employees?**
- **If I “voluntarily” close my business because the pandemic has caused business interruption, must I pay employees for leave?**

FAQs

- **My employee is concerned about infection and does not want to come in the workplace, but has not been advised by a health care provider to stay home. Is she entitled to paid leave?**
- **My employee is high risk and has been advised by a health care provider to stay home. Is she entitled to paid leave?**
- **Can I require an employee who has been advised to by a health care provider to stay home to provide documentary proof of the provider's advice?**

FAQs

- **Do I have to pay for leave if I furlough or terminate only some employees?**
- **My employee has already taken FMLA this year. Do I have to provide additional paid leave?**
- **My employee has available paid sick time or other PTO. Can I require them to use that time in lieu of or concurrently with EPSLA or EFMLEA leave?**

CARES ACT

- Payroll protection program
 - Small business loans to cover payroll; health care costs; mortgage interest payments, rent and utility payments; and interest on pre-existing debt obligations
 - Relaxed eligibility
 - Forgiveness for portions of loan
- Payroll tax credit for 50% of eligible wages paid to employees for businesses materially impacted by COVID-19 and deferral of payroll tax payments
- Further expand unemployment insurance (Pandemic Unemployment Assistance)

CARES ACT

Coronavirus (COVID-19) Small Business Guidance & Loan Resources:

<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

<https://covid19relief.sba.gov/#/>

RLL Employment Law Department Capabilities

- Employment discrimination, wage and hour lawsuits, and non-compete and trade secrets litigation.
- Employee Handbooks.
- Assistance with terminations.
- Assistance with minimum wage and exemption issues.
- Representation in investigations and proceedings by federal or state agencies such as EEOC, DOL, OSHA, or state attorneys general.
- Internal investigations and training on harassment and discrimination.
- Auditing of employment practices and policies, classifications, and pay.
- Managing e-discovery projects.
- Facilitating dispute avoidance and resolution.

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Thank you.

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During this rapidly evolving Covid-19 crisis, **Rusing Lopez & Lizardi** is actively monitoring federal and state government guidance and situational updates. We are available and ready to help clients with any Coronavirus-related business concerns. RL&L attorneys are coordinating closely to provide comprehensive counsel in:

- **BUSINESS LITIGATION** – navigating commercial disputes and special regulatory guidance, insurance policy review and coverage, CARES Act;
- **BUSINESS & CORPORATE TRANSACTIONS** – helping with businesses affected by the COVID-19 crisis including maintaining operations, relief options, insurance policy review, federal loan program guidance;
- **BANKING & FINANCE** – helping to navigate regulatory developments, financing transactions, loan modifications, state and federal relief programs, and other industry-specific issues;
- **LABOR & EMPLOYMENT** – providing answers, strategy, and counsel to businesses on work-related issues including employee COVID-19 processes and procedures and employee retention and layoffs;
- **REAL ESTATE** – providing guidance on real estate transactions including acquisition and leasing, mortgage forbearance programs, zoning and development opportunities, and disaster relief programs;
- **COMMERCIAL & RESIDENTIAL LEASING** – providing guidance on lease obligation, helping landlords respond to tenant inquiries regarding deferred rent requests, negotiating, reviewing, and drafting leases, providing guidance on rent assistant programs, and all other leasing matters.

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Established in 1992. One Firm. Two Cities.

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