



**COVID-19 UPDATE**  
**To the Members of the Syracuse Builders Exchange**  
**Earl R. Hall, Executive Director**

Important items from Monday, April 13, 2020:

**REVISED "REPORTABLE" OSHA COVID-19 GUIDELINES**

On Friday, April 10, OSHA issued interim enforcement guidance on recordkeeping regarding COVID-19:

In areas where there is ongoing community transmission, employers other than those in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions may have difficulty making determinations about whether workers who contracted COVID-19 did so due to exposures at work. In light of those difficulties, OSHA is exercising its enforcement discretion in order to provide certainty to the regulated community.

Employers of workers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions must continue to make work-relatedness determinations pursuant to 29 CFR § 1904. Until further notice, however, OSHA will not enforce 29 CFR § 1904 to require other employers to make the same work-relatedness determinations, except where:

1. There is objective evidence that a COVID-19 case may be work-related. This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and
2. The evidence was reasonably available to the employer. For purposes of this memorandum, examples of reasonably available evidence include information given to the employer by employees, as well as information that an employer learns regarding its employees' health and safety in the ordinary course of managing its business and employees.

This memorandum (<https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>) provides interim guidance to Compliance Safety and Health Officers for enforcing the requirements of 29 CFR Part 1904 with respect to the recording of occupational illnesses, specifically cases of COVID-19. This memorandum will take effect immediately and remain in effect until further notice. This guidance is intended to be time-limited to the current public health crisis. Please frequently check OSHA's webpage at [www.osha.gov/coronavirus](http://www.osha.gov/coronavirus) for updates.

**COVID-19 PAID LEAVE FFCRA POLICY FOR EMPLOYERS**

The United States Department of Labor requires companies with 500 or fewer employees must have a policy in place to address the paid leave provisions for COVID-19 in the "Families First Coronavirus Response Act." Attached please find a .pdf template which employers may use to create their own policy.

Below is a link to the United States Department of Labor FFCRA web site, which addresses many of the employer requirements.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

### **ESD ISSUES NEW CONSTRUCTION GUIDANCE**

On Thursday, April 9, 2020, Empire State Development (“ESD”) issued amended guidance for essential businesses which are exempt for the 100% workforce reduction Executive Order. The construction section was significantly modified to reflect more stringent guidelines. Below please find the new guidance.

<https://esd.ny.gov/guidance-executive-order-2026>

### **FEDERAL AND STATE REQUIRED COVID-19 POSTINGS**

The United States Department of Labor now requires you to post information on both the Paid Sick Leave Act and the expanded Family and Medical Leave Act. Considering that many employees are banned from physically reporting to work, employers can email or direct mail the notice to employees, or post it to their website. [Click here](#) for links to the poster, fact sheets and FAQs. NYS also has a poster on paid sick leave, that you can [download here](#).

### **NY GOV. CUOMO'S LATEST EXECUTIVE ORDER**

Amid the ongoing COVID-19 pandemic, New York Governor Andrew M. Cuomo announced on Sunday, April 12, 2020 he will issue an Executive Order directing employers to provide essential workers with cloth or surgical masks free of charge to wear when directly interacting with the public. It remains unclear how construction industry employers will have to comply with this new directive as “interacting with the public” is viewed by many as ambiguous. The Syracuse Builders Exchange will attempt to provide guidance on this as more information is made available.

### **SBE WEBINARS**

Sheats & Bailey, PLLC attorneys and I continue to collaborate on items of importance to the construction industry, including the ever-changing guidance from ESD. Last Thursday we once again hosted a live webinar to educate our members on the guidance amendments from ESD specific to the construction industry. As a reminder, all of our webinars are available on [www.syrabex.com](http://www.syrabex.com), under the COVID-19 Updates link. Visitors will find not only the past webinars, but additional helpful COVID-19 related links.

A handwritten signature in blue ink, appearing to read "Brian J. Sheats".

# FFCRA COVID-19 Paid Leave Policy

## Families First Coronavirus Response Act

*Effective April 1, 2020 – Dec. 31, 2020*

The information contained in this policy is intended to provide a summary of the rights and obligations provided by the Families First Coronavirus Response Act, Pub. L. 116-127 (“FFCRA”). Any particular matter will be governed by federal law and any corresponding application under state FMLA and/or paid sick leave laws.

## Emergency FMLA Expansion Act

### I. Eligibility

Any full or part-time employee who [EMPLOYER] has employed for at least 30 calendar days prior to the designated leave is an eligible employee under the Emergency Family and Medical Leave Expansion Act (“E-FMLA”).

Employees are not eligible for Emergency FMLA (“E-FMLA”) if furloughed by [EMPLOYER] prior to the FFCRA’s effective date of April 1, 2020 or prior to utilizing any entitlements under the FFCRA. Otherwise eligible employees will lose eligibility for E-FMLA if [EMPLOYER] furloughs the employee, even if the employee is currently on leave, because of a legitimate business reason and who would have been furloughed even if they had not taken leave.

### II. Entitlement

From April 1, 2020 to December 31, 2020, an eligible employee is entitled to up to a total of 12 weeks of job-protected leave, if an employee is unable to work (or telework) due to a need for leave to care for the employee’s child under 18 years of age if the child’s school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency. Employees may take E-FMLA in 12 consecutive weeks or they may use the leave intermittently in any increment (subject to an agreement with [EMPLOYER]).

[EMPLOYER], in its discretion, may request documentation<sup>1</sup> in support of such leave. Documentation may include, but is not limited to: notice from the government, school, or day care website, published in the newspaper, or an e-mail from an employee or official of the school, place of care, or child care provider.

E-FMLA leave is available to eligible employees in addition to availability for other types of FMLA (see FMLA policy), but the additional E-FMLA leave runs concurrently with FMLA taken for other qualifying reasons. The total amount of leave available to any employee eligible for both FMLA and E-FMLA may not exceed a total of 12 workweeks in [DEFINE YEAR].

---

<sup>1</sup> See FMLA Policy for more information regarding documentation.

### III. Paid Leave under the Emergency FMLA Expansion Act

The first ten (10) days of E-FMLA leave will be unpaid unless the employee elects to offset the unpaid leave with any available paid leave benefits (such as vacation, personal leave, medical leave, sick leave, or Emergency Paid Sick Leave) under [EMPLOYER'S] policies.

After 10 days, an employee is entitled to receive wages for E-FMLA. The E-FMLA wages will be paid at two-thirds of the employee's regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work,<sup>2</sup> up to a maximum of two hundred dollars (\$200) per day with an aggregate total of ten thousand dollars (\$10,000) per employee for the E-FMLA leave.

**[Optional:** After the first ten (10) days of unpaid leave, Employee may also elect to use existing [EMPLOYER]-provided leave entitlements, such as paid time off, to increase employee's pay in excess of the abovementioned statutorily-required E-FMLA pay, but the employee may not increase their pay in excess of the employee's regular rate of pay.]

### IV. Job Restoration

#### **[If 25 or More Employees]:**

Employees returning from E-FMLA will be reinstated in the same position or a position equivalent in pay, benefits and other terms and conditions of employment, unless the employee is a "key" employee as defined under the Family and Medical Leave Act ("FMLA") and a hardship would result in keeping the position unfilled.

An employee's reinstatement rights are the same as they would have been had the employee not been on leave. Thus, if an employee's position would have been eliminated or an employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.

#### **[If fewer than 25 employees]:**

An employee will be returned to the same or equivalent position upon return to work from E-FMLA leave. In the event that an employee took leave under the E-FMLA and the position held by the employee does not exist due to economic conditions or other changes that affect employment and are a result of the public health emergency, [EMPLOYER] will make reasonable efforts to restore the employee to a position equivalent to the position held by the employee when leave was commenced—with equivalent employment benefits, pay, and other terms and conditions of employment. If [EMPLOYER'S] reasonable efforts to restore employee fail, [EMPLOYER] will make reasonable efforts to restore the employee to an equivalent position when one becomes available for up to one year,

---

<sup>2</sup> Employees who work a varying schedule will receive pay based on the average number of hours per day that the employee worked over the preceding six (6) months. A new employee will be paid based on the employee's anticipated schedule.

beginning on the earlier of two dates: (1) the date when qualifying need related to public a public health emergency concludes, or (2) 12 weeks after the date which the employee's leave commences.

## **Emergency Paid Sick Leave Act**

### **I. Eligibility**

From April 1, 2020 to December 31, 2020, all employees are eligible for the Emergency Paid Sick Leave ("EPSL").

Full-time employees will receive 80 hours of EPSL. Part-time employees are eligible to receive a prorated amount of EPSL based on the average number of hours that the employee works over a two-week period. EPSL is immediately available for use by employees for the purposes set forth below, regardless of how long the employee has been employed.

Employees are not eligible for EPSL if furloughed or subject to layoff by [EMPLOYER] prior to the FFCRA's effective date of April 1, 2020. Eligible employees may lose eligibility for EPSL if [EMPLOYER] furloughs the employee, even if currently out on EPSL, because of a legitimate business reason and who would have been furloughed even if they had not taken leave.

### **II. Entitlement**

An eligible employee is entitled to use EPSL if the employee is unable to work (or telework) due to a need for leave because:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. The employee is advised by health-care provider to self-quarantine due to COVID-19 concerns;
3. The employee is experiencing COVID-19 symptoms and seeking a medical diagnosis;
4. The employee is caring for an individual subject to a federal, state or local quarantine or isolation order or is advised by a health-care provider to self-quarantine due to COVID-19 concerns;
5. The employee is caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Subject to [EMPLOYER'S] discretion, employees may request and receive intermittent EPSL if the employee is unable to work or telework due to a need to care for the employee's son or daughter under 18 years of age due to the child's school or place of care being closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency. Intermittent EPSL is not available if the need for leave is for reasons 1-4 or 6 outlined above.

[EMPLOYER] in its discretion may request documentation in support of such leave.<sup>3</sup> Documentation may include, but is not limited to: notice from the government, school, or day care website, published in the newspaper, or an e-mail from an employee or official of the school, place of care, or child care provider, or medical certification. If employee continues leave beyond the two weeks of emergency paid sick leave because employee's medical condition for COVID-19-related reasons rises to the level of a "serious health condition" under the FMLA, employee reserves the right to ask for medical certification under EMPLOYER'S FMLA Policy. Employees are expected to comply with the requirements of [EMPLOYER'S] FMLA policy. Failure to provide certification within [X] days of [EMPLOYER'S] request may result in a denial of continuation of leave.

### **III. Payment of EPSL**

EPSL taken for reasons 1-3 will be paid at the employee's regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work.<sup>4</sup> An employee's total payout of EPSL taken for reasons 1-3 is limited to five hundred eleven dollars (\$511) per day and cannot exceed a total of five thousand one hundred ten (\$5,110) per employee.

EPSL taken for reasons 4-6 above will be paid at two-thirds of the employee's regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work.<sup>5</sup> An employee's payout total of EPSL taken for reasons 4-6 is limited to two hundred dollars (\$200) per day and cannot exceed a total of two thousand dollars (\$2,000) per employee.

Paid emergency leave is only available from April 1, 2020, through December 31, 2020, and will not carry over to the following year.

**[Optional:** Employee may elect to use existing [EMPLOYER]-provided leave entitlements, such as paid time off, to increase employee's pay in excess of the statutorily-required E-FMLA pay, but must not exceed the employee's regular rate of pay.]

### **IV. Prohibited Acts**

[EMPLOYER] will not discharge, discipline, or in any manner discriminate against any employee who takes leave under the FFCRA or who has filed any complaint or instituted any proceeding under or related to the FFCRA.

### **V. Other**

If a non-bargaining employee elected to receive the employers group health coverage, the employee is entitled to continued group health coverage during their usage of EFMLEA on the same terms as if the

---

<sup>3</sup> See FMLA Policy.

<sup>4</sup> Employees who work a varying schedule will receive pay based on the average number of hours per day that the employee worked over the preceding six (6) months. A new employee will be paid based on the employee's anticipated schedule.

<sup>5</sup> See above.

Insert Company  
Logo Here

employee continued to work. The employee must continue to make any normal contributions to the cost of their health coverage. *See FMLA Policy.*

For definitions, certification and recertification, designation, and procedure for requesting FMLA, please see [EMPLOYER'S] FMLA Policy.

Employees with questions about what this E-FMLA policy or the company's sick leave policy should consult with Human Resources.