

The Families First Coronavirus Act was signed into law on March 18, 2020. It will go into effect within 15 days of President Trump’s signature, we do not know the specific date yet. The Act will remain into effect until December 31, 2020. It applies to private sector employers with fewer than 500 employees and all government employers.

	Family Medical Leave Act (FMLA) Public Health Emergency Leave	Emergency Paid Sick Leave (EPSL)
Eligibility	Employees who have been employed for at least 30 calendar days. Employees that are “health care providers” and emergency responders” can be excluded. ¹	Employees do not have to be employed for a specific amount of time to use EPSL. Employees that are “health care providers” and emergency responders” can be excluded. ²
Amount	12 weeks.	Full time employees receive 80 hours. Part time employees receive the number of hours equal to average number of hours they work over a 2-week period.
Purposes	Employee is unable to work, or telework, to take care of a son or daughter under the age of 18 because (1) their school or place of care has been closed or (2) the son or daughter’s childcare provider is unavailable, because of a public health emergency.	<ol style="list-style-type: none"> (1) Employee subject to a Federal, State, or local quarantine order related to the Coronavirus. (2) Employee has been advised by a health care provider to self-quarantine due to concerns related to the Coronavirus. (3) Employee is experiencing symptoms of Coronavirus and is seeking a medical diagnosis. (4) Employee is caring for an individual who is subject to (1) or (2). (5) Employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to Coronavirus precautions. (6) Employee is experiencing any other substantially similar condition specified by the Secretary of the U.S. Department of Health & Human Services.
Pay	Initial 10 days (2 weeks) may be unpaid. From the 11th day (3rd week) onward, employer must provide paid leave of at least 2/3 the employee’s “regular rate of pay” under the Fair Labor Standards Act (FLSA) for the number of hours the employee would have been regularly scheduled to work. Note – this is pay from the employer, so pay from State Disability Insurance would probably not count. Caps - \$200 per day and \$10,000 in total.	<ul style="list-style-type: none"> • If employees take EPSL for the purposes listed under (1),(2), and (3) above, they receive the greater of their regular rate of pay either under the FLSA or California’s Minimum Wage Order. However, an employee’s pay cannot exceed \$511 per day and \$5,110 in total. • For leave taken for the purposes listed under (4), (5), and (6) above, an employee receives 2/3 of this regular rate of pay. However, it cannot exceed \$200 and \$2,000 in total.
Combining with Other Paid Leaves	<ul style="list-style-type: none"> • Employees have the sole right to determine whether or not they want to use any paid leaves, including EPSL, during the first 10 days. • From the 3rd week onward, employees may choose to use 1/3 of their other paid leaves along with this leave so they receive their full pay, but it is unclear whether an employer can require them to do so. 	Employees can use other paid leaves with EPSL so they receive their full pay. It is unclear whether an employer can require them to do so.
Relationship with Other Leaves	<ul style="list-style-type: none"> • Employees are still entitled up to a maximum of 12 weeks of FMLA leave. So if an employee already used their FMLA leave, the Act does not provide them another period of it. • Leave does not run concurrently with California Family Rights Act (CFRA) leave – the purpose above are not covered by the CFRA. 	Employer cannot require employee to use this leave before any other paid leaves.

¹ The Department of Labor has been tasked with issue regulations regarding the exclusion of “health care providers” and “emergency responders,” which will hopefully include definitions of both.

² Please see Fn. 1.