



Updated March 30, 2021

REVISED

### COMPLIANCE WITH FEDERAL, STATE, AND CITY COVID-19 LEAVE LAWS

*Nonprofit employers may be covered by more than one COVID-19 Leave law. This chart provides general information about how the laws intersect and is not legal advice. The New York State law specifically says that the federal law supersedes the state law, unless the state law provides a greater benefit for the employee. In that case, the employee will be entitled to benefits (leave time and pay) available under federal law, plus the difference between the state and federal benefits. Private sector employers with 500 or more employees are exempt from the federal law but must comply with the New York State law.*

*The Families First Coronavirus Response Act (FFCRA), enacted in March 2020, required employers with fewer than 500 employees to provide the employees with Federal Emergency Paid Sick Leave (EPSLA) and Federal Emergency Family and Medical Leave Expansion Act (EFMLEA) for designated reasons related to COVID-19. Under the FFCRA, the related employer expense could be offset by payroll tax credits equal to the wages paid to employees for the qualifying leave.*

***Note: The mandatory paid leave provisions of the FFCRA, including the EPSLA and the EFMLEA expired on December 31, 2020 without extension. However, under the American Rescue Plan Act of 2021 (ARPA), the employer tax credit provisions of the FFCRA accompanying the expired mandatory leave provisions were further extended (beyond the March 31, 2021 extension under the Consolidated Appropriations Act of 2021) through September 30, 2021. As a result, employers may voluntarily grant the paid FFCRA leaves. If they do so, they may claim payroll tax credits for the voluntary grants through September 30, 2021. Employers must adhere to the FFCRA's qualifying factors to receive the payroll tax credit. However, the ARPA also expands the qualifying reasons for FFCRA leave for employers who choose to offer it and claim payroll tax credit.***

***While employers are no longer mandated to provide paid leave for COVID-19-related absences under the federal law, New York State, City and local laws remain in effect requiring employers to provide paid or unpaid leave, depending on the number of employees, under certain circumstances.***

***NYS COVID-19 VACCINE PAID LEAVE: New York State recently enacted a law requiring employers to provide each employee sufficient paid leave of absence, not to exceed four hours, unless otherwise provided under a Collective Bargaining Agreement or authorized by the employer, for each COVID-19 vaccine injection. The leave period would be in addition to any other entitled leave. A collective bargaining agreement may waive this law***

**explicitly. Employers must pay at the employee’s regular rate of pay for any hours of vaccination leave. Retaliation against employees for availing their rights under the law is prohibited. The law is effective immediately and expires 12/31/2022.**

**Some resources for New York City, State, and Federal COVID-19 leave laws:**

[https://www1.nyc.gov/site/dca/businesses/paid-sick-leave-law-for-employers.page;](https://www1.nyc.gov/site/dca/businesses/paid-sick-leave-law-for-employers.page)

[https://www1.nyc.gov/site/dca/about/paid-sick-leave-FAQs.page;](https://www1.nyc.gov/site/dca/about/paid-sick-leave-FAQs.page)

<https://coronavirus.health.ny.gov/guidance-use-covid-19-sick-leave>

<https://paidfamilyleave.ny.gov/2021>

<https://paidfamilyleave.ny.gov/COVID19>

<https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>

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

<https://www.congress.gov/bill/117th-congress/house-bill/1319/text>

	<b>FEDERAL EMERGENCY PAID SICK LEAVE ACT (EPSLA)</b>	<b>FEDERAL EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLEA) LEAVE</b>	<b>NYS COVID-19 PAID LEAVE</b>	<b>NYC EARNED SAFE AND SICK TIME ACT</b>
<b>EFFECTIVE DATE</b>	4/1/20-12/31/20 (ER Can provide leave voluntarily beyond 12/31/20 and claim tax credits through 9/30/21)	4/1/20-12/31/20 (ER can provide voluntarily beyond 12/31/20 and claim tax credits through 9/30/21)	3/18/20	5/5/18
<b>COVERED EMPLOYERS (ER)</b>	Fewer than 500 EEs as of date leave begins	Fewer than 500 EEs as of date leave begins	All ERs	All private, nonprofit, and household ERs employing workers in NYC
<b>ELIGIBLE EMPLOYEES (EE)</b>	All EEs regardless of length of service <ul style="list-style-type: none"> <li>• ER may exclude health care providers and emergency</li> </ul>	All EEs who have worked for at least 30 calendar days <ul style="list-style-type: none"> <li>• ER may exclude health care providers</li> </ul>	All EEs, except: <ul style="list-style-type: none"> <li>• those who self-quarantine</li> </ul>	All EEs regardless of length of service and employed by private

	<p>responders [NOTE: the health care provider exclusion has been successfully challenged in court; seek legal advice before using]</p> <ul style="list-style-type: none"> <li>• EEs who have exhausted regular FMLA are eligible</li> </ul>	<p>and emergency responders [NOTE: the health care provider exclusion has been successfully challenged in court; seek legal advice before using]</p> <ul style="list-style-type: none"> <li>• EEs who have exhausted regular FMLA are ineligible</li> <li>• ERs with under 50 EEs may deny leave in limited situations</li> </ul>	<ul style="list-style-type: none"> <li>• those who are asymptomatic and can work remotely</li> <li>• those who traveled to a high-risk country for non-business reasons</li> </ul>	<p>ERs except:</p> <ul style="list-style-type: none"> <li>• certain therapists are ineligible</li> <li>• Independent contractors not meeting definition of EE under NYS Labor Law</li> <li>• Certain EEs subject to collective bargaining agreement</li> <li>• Participants in Work Experience Programs under the NYS Social Services Law</li> <li>• EEs whose work is compensated by qualified scholarship programs per 26 USC sec. 117</li> </ul>
<p><b>QUALIFYING EVENTS</b></p>	<p>EE unable to work or telework due to COVID-19 related reasons:</p> <ul style="list-style-type: none"> <li>• 1. EE subject to quarantine or isolation order inc. stay at home order</li> <li>• 2. health care provider advised EE to self-quarantine</li> <li>• 3. EE has symptoms and awaits diagnosis</li> <li>• 4. EE cares for individual subject to order as in 1 above</li> </ul>	<p>EE unable to work or telework due to need to care for child under 18 years (or older if disabled) whose school/daycare/child care provider is closed/unavailable due to COVID-19 by order of federal, state, or local government</p> <p><b>ARPA expanded qualifying reasons for which payroll tax credit can be claimed:</b></p> <ul style="list-style-type: none"> <li>• All qualifying reasons under EPSLA</li> </ul>	<ul style="list-style-type: none"> <li>• EE is under government mandatory or precautionary order of quarantine or isolation for COVID-19</li> <li>• EE’s minor child’s school/daycare/child care provider is under</li> </ul>	<ul style="list-style-type: none"> <li>• EE’s workplace, or the EE’s child’s school/childcare provider, is closed by order of a public official due to a “Public health emergency” (= declaration made by the commissioner of</li> </ul>

	<ul style="list-style-type: none"> <li>• 5. EE cares for child under 18 years (or older if disabled) whose school/provider closed/unavailable</li> <li>• 6. Other similar situations as may be designated</li> </ul> <p><b>ARPA expanded qualifying reasons for which payroll tax credit can be claimed:</b></p> <ul style="list-style-type: none"> <li>• Obtaining a COVID-19 vaccine;</li> <li>• Recovering from illness or condition related to COVID-19 vaccine; or</li> <li>• Seeking or awaiting COVID-19 diagnosis or test results where EE was exposed or EER requested the test/diagnosis.</li> </ul>		<p>mandatory or precautionary order of quarantine or isolation for COVID-19</p> <ul style="list-style-type: none"> <li>• If ER mandates EE to not report to work due to COVID-19 exposure, even if EE is not subject to quarantine/isolation order (DOL 1/20/21 guidance)</li> <li>• EE only eligible for up to 3 COVID-19 orders</li> </ul>	<p>health and mental hygiene pursuant to subdivision d of section 3.01 of the New York City health code or by the mayor pursuant to section 24 of the executive law)</p> <ul style="list-style-type: none"> <li>• EE has an illness/injury/health condition, needs medical care</li> <li>• EE must care for a family member who needs medical care</li> <li>• EE needs to take actions to restore physical, psychological or economic safety for self or family member</li> </ul>
<b>DOCUMENTATION</b>	<p>EE must submit signed written request inc. dates and reason for leave and reasons for the qualifying events above:  Reasons 1-4: name of health care provider or govt. entity ordering isolation  Reason 5: name of child; name of school/day care/childcare provider; and statement that no other “suitable person” is available to care for child</p>	<p>EE must submit signed written statement with name of child; name of school/day care/childcare provider; and statement that no other “suitable person” is available to care for child</p>	<p>EE must obtain order of quarantine from local public health department. If unable to obtain one immediately, may submit medical provider’s certification, then follow up with LPHD’s order</p>	<p>After absence of more than 3 consecutive workdays, ER can require: a note from a licensed medical, social service or legal service provider, member of clergy, a police report, or a notarized letter from</p>

				EE indicating need for leave
<b>LENGTH OF LEAVE</b>	<ul style="list-style-type: none"> <li>• 80 hours for FT EEs (=regularly work 40 hrs /week)</li> <li>• Average hours worked in two-week period for PT EEs</li> <li>• EE gets only this amount of time off even if changes ERs</li> <li>• Does not count toward regular FMLA 12 week maximum leave</li> <li>• EE entitled to pay for eligible leave whether taken or requested during effective period 4/1/2020 through 12/31/2020 (<a href="https://www.dol.gov/agencies/w hd/pandemic/ffcra-questions#104">https://www.dol.gov/agencies/w hd/pandemic/ffcra-questions#104</a>)</li> </ul> <p><b>ARPA provides</b> a new annual allotment of Up to 80 hours (10 days) of qualifying paid sick leave per EE, available for 2021 tax credits if ER chooses to provide the leave.</p>	<ul style="list-style-type: none"> <li>• 12 weeks</li> <li>• counts toward regular FMLA 12 week maximum</li> <li>• EE must be restored to same or equivalent position <ul style="list-style-type: none"> <li>○ some exceptions for organizations with fewer than 25 EEs</li> </ul> </li> <li>• EE entitled to pay for eligible leave whether taken or requested during effective period 4/1/2020 through 12/31/2020 (<a href="https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#104">https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#104</a>)</li> </ul>	Duration of quarantine	<ul style="list-style-type: none"> <li>• 40 hours per consecutive 12-month period for ERs with 99 or fewer EEs;</li> <li>• Effective 1/1/21, 56 hours per consecutive 12-month period for ERs with 100 or more EEs</li> </ul>
<b>INTERMITTENT LEAVE</b>	<ul style="list-style-type: none"> <li>• Yes if ER and EE mutually agree, BUT not if EE works onsite (exc for childcare sick leave) [NOTE: Parts of this regulation have been successfully challenged in court; seek legal advice]</li> </ul>	Yes, if ER and EE mutually agree [NOTE: The requirement that the ER must agree to intermittent leave has been successfully challenged in court; seek legal advice]	Not addressed in statute but DOL guidance limits the EE's use of sick time to 3 orders of quarantine/isolation	Yes
<b>AMOUNT PAID</b>	<ul style="list-style-type: none"> <li>• For reasons 1-3 in qualifying events above, regular pay up to \$511 per day/\$5,110 total</li> <li>• For reasons 4-6 in qualifying events above, 2/3 regular pay up to \$200/day/\$2,000 total</li> </ul>	<ul style="list-style-type: none"> <li>• First 2 weeks are unpaid, but see EPSL</li> <li>• Remaining 10 weeks paid at 2/3 regular salary</li> <li>• Capped at \$200/day and \$10,000 total (\$12,000 including EPSL pay)</li> </ul> <p><b>ARPA Change:</b></p> <ul style="list-style-type: none"> <li>• All 12 weeks of Emergency Family Leave can be paid</li> </ul>	Sick pay for EE's own quarantine depends on size of ER as of 1/1/20: <ul style="list-style-type: none"> <li>• 1-10 EEs : unpaid</li> <li>• 1-10 EEs &amp; greater than \$1 million in ER net</li> </ul>	<ul style="list-style-type: none"> <li>• Full salary if ER has at least 5 EEs or if smaller, and had a net income of \$1MM or more in previous 12-month period</li> <li>• Unpaid if ER has</li> </ul>

	<p><b>Under ARPA</b>, if an ER decides to continue to voluntarily provide emergency paid sick leave, ER can claim payroll tax credit to offset up to 10 days of wages paid from 4/1/2021 to September 30, 2021 even if EE previously exhausted emergency paid sick leave entitlement.</p>		<p>income (<i>prior tax year</i>): 5 days are paid by ER</p> <ul style="list-style-type: none"> <li>• 11-99: 5 days are paid by ER</li> <li>• 100 and over: 14 days are paid by ER</li> </ul> <p>Pay for child's quarantine:</p> <ul style="list-style-type: none"> <li>• Same as Paid Family Leave</li> </ul>	<p>fewer than 5 EEs and had a net income of less than \$1 MM in previous 12-month period.</p>
<b>SOURCE OF FUNDS</b>	<p>ER takes refundable tax credit through 9/30/21, limited to \$511/day and \$5,110 total or \$200/day and \$10,000 total, even if the EE receives more under ER's policies</p>	<p>ER takes refundable tax credit through 3/31/21, limited to \$200/day and \$10,000 total, even if the EE receives more under ER's policies.</p> <p><b>ARPA increases</b> the aggregate cap for tax credits from \$10,000 to \$12,000 per EE</p>	<p>ER's with fewer than 100 EEs: After 5 days of paid sick leave, EE will be eligible for Paid Family Leave and disability benefits (weekly benefit capped at \$840.70 and \$2,043.92, respectively)</p>	<p>Paid by ER</p>
<b>USE OF ER'S PAID SICK AND VACATION TIME</b>	<p>EE has sole option of using EPSLA prior to any leave under ER's policies or federal, state, or local law. This leave does not diminish any other leave under ER's policies</p>	<p>EE and ER may mutually agree to concurrent use of paid time off under ER's policies</p>	<p>Benefits under law are <i>in addition to</i> sick pay and paid time off under ER's policies, as well as under NYC's ESSTA</p>	<p>May be used in lieu of NYC mandated paid time off</p>
<b>GROUP HEALTH INSURANCE</b>	<p>Must be maintained</p>	<p>Must be maintained</p>	<p>Must be maintained</p>	<p>Must be maintained</p>
<b>ENFORCEMENT</b>	<p>No retaliation Same as for FLSA</p> <ul style="list-style-type: none"> <li>• EEs may file complaint with US DOL</li> </ul> <p><b>Under ARPA:</b> ER disqualified from</p>	<p>No retaliation or interference Same as for FMLA</p> <ul style="list-style-type: none"> <li>• EEs may file complaint with US DOL</li> <li>• EE's ineligible for regular FMLA may not file lawsuit</li> </ul>	<p>No retaliation or discrimination</p> <ul style="list-style-type: none"> <li>• EEs may file complaint with NYS DOL</li> </ul>	<p>No retaliation or discrimination</p> <ul style="list-style-type: none"> <li>• EEs may file complaint with NYC Department of consumer and</li> </ul>

	<p>FFCRA payroll tax credits if:</p> <ul style="list-style-type: none"> <li>• Fail to comply with FFCRA including anti-retaliation or</li> <li>• Discriminate in favor of highly compensated EE, FT EE, or tenure when offering leave</li> </ul>	<p><b>Under ARPA:</b> ER disqualified from FFCRA payroll tax credits if:</p> <ul style="list-style-type: none"> <li>• Fail to comply with FFCRA including anti-retaliation or</li> <li>• Discriminate in favor of highly compensated EE, FT EE, or tenure when offering leave</li> </ul>		<p>worker protection (DCWP)</p>
<b>RECORD KEEPING</b>	Documentation must be retained for 4 years	Documentation must be retained for 4 years	Documentation must be retained for 4 years	Documentation must be retained for 3 years
<b>NOTICE TO EE</b>	Under FFCRA ERs were required to post or send EEs Notice	ERs must post or send EEs Notice	ERs to include information in written materials to EEs such as EE handbooks or other written guidance to EEs regarding their PFL benefits including how to file for them.	<ul style="list-style-type: none"> <li>• ER must give EE written Notice of EE Rights.</li> <li>• ER must also post, by 1/1/21, the Notice in visible and accessible place.</li> </ul>

***This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at [jmoldover@lawyersalliance.org](mailto:jmoldover@lawyersalliance.org) or visit our website at [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information.***

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