

WHO GETS PAID?

An Update on the FFCRA

Presented by:
Andrew Brown, Esq.
Adams Gutierrez & Lattiboudere, LLC.
1037 Raymond Boulevard, Suite 900
Newark, New Jersey 07102
(973)735-2742
abrown@asglaw.com

Families First Coronavirus Response Act (“FFCRA”)

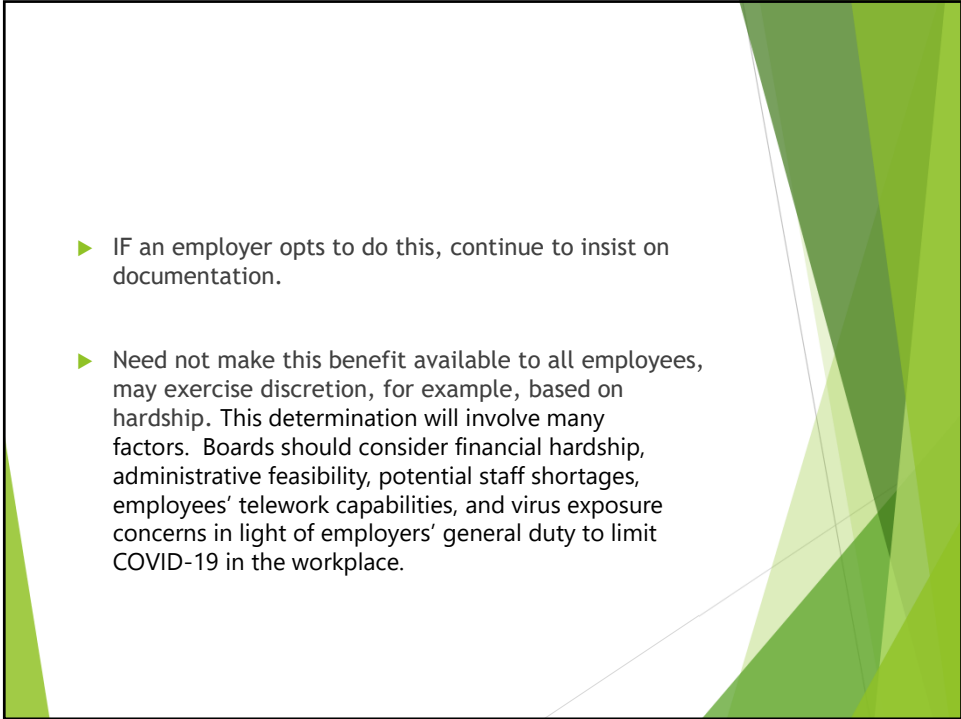
Effective April 1, 2020 Congress enacted FFCRA, which contains two components:

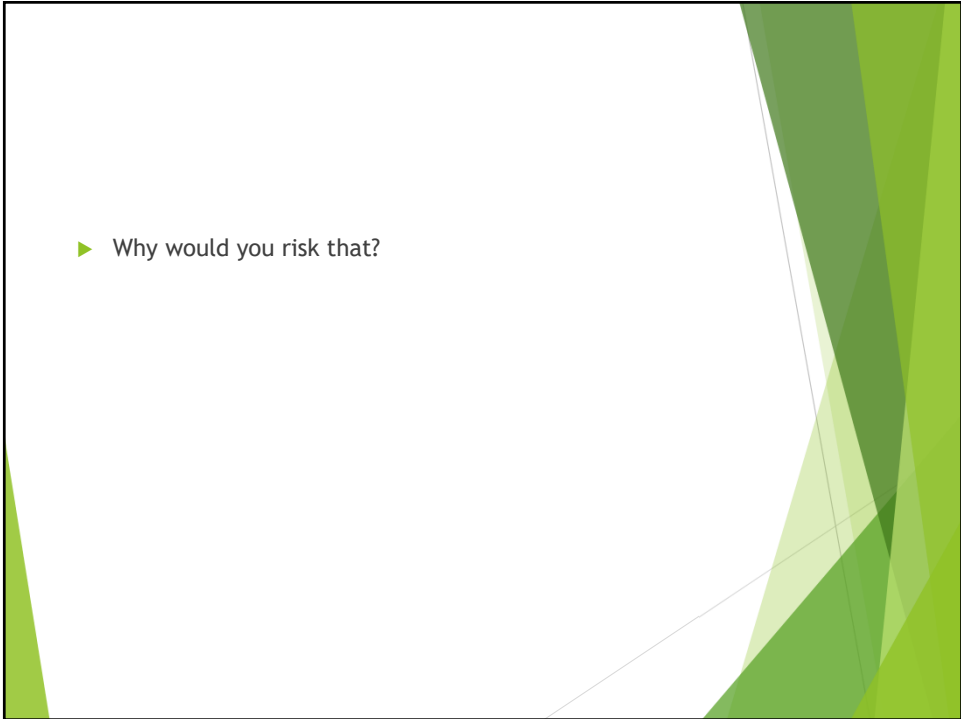
- ▶ FFCRA amends the Federal Family and Medical Leave Act through the Emergency Family and Medical Leave Expansion Act (“E-FMLA”) to assist workers in the current public health emergency.
- ▶ FFCRA establishes the Emergency Paid Sick Leave Act (“EPSLA”) requiring the provision of paid sick time to eligible employees for certain circumstances associated with the COVID-19 crisis.

The Update

- ▶ On December 27, 2020, then President Trump signed the 5593 page Consolidated Appropriations Act (“CAA”).
- ▶ It did not extend the mandates of the Families First Coronavirus Act (“FFCRA”), which expired on December 31, 2020.
- ▶ Employees on FFCRA leave at that time continue on FFCRA leave with all attendant benefits

- ▶ It did make it voluntary for employers to extend the benefits of the FFCRA through March 31, 2021.
- ▶ It is not a ‘second bite at the apple.’ If the entitlements were used in 2020, no new entitlement is created.
- ▶ Employees with unused FFCRA leave, may ask to use any time left under it.
- ▶ Public employers do not get tax credits under FFCRA. You still don’t, but are now required to pay all payroll taxes on paid sick leave. (I’m not an auditor or payroll accountant)

- 
- ▶ IF an employer opts to do this, continue to insist on documentation.
 - ▶ Need not make this benefit available to all employees, may exercise discretion, for example, based on hardship. This determination will involve many factors. Boards should consider financial hardship, administrative feasibility, potential staff shortages, employees' telework capabilities, and virus exposure concerns in light of employers' general duty to limit COVID-19 in the workplace.

- 
- ▶ Why would you risk that?

- ▶ What other options are there?
 - ▶ What does the contract or policy manual provide?
 - ▶ Sick leave

 - ▶ Family illness days

 - ▶ Garden variety FMLA/NJFLA

 - ▶ Is it a leave request or an accommodation?

- ▶ N.J.S.A. 18A:30-6
 - ▶ When absence, under the circumstances described in section 18A:30-1 of this article, exceeds the annual sick leave and the accumulated sick leave, the board of education may pay any such person each day's salary less the pay of a substitute, if a substitute is employed or the estimated cost of the employment of a substitute if none is employed, for such length of time as may be determined by the board of education in each individual case. A day's salary is defined as 1/200 of the annual salary.

- ▶ N.J.S.A. 18A:30-7
- ▶ Nothing in this chapter shall affect the right of the board of education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave, or to grant sick leave over and above the minimum sick leave as defined in this chapter or allowing days to accumulate over and above those provided for in section 18A:30-2, except that no person shall be allowed to increase his total accumulation by more than 15 days in any one year.

- ▶ What if the Association asks?
 - ▶ Is it a gift?
 - ▶ Is it negotiable?
 - ▶ Do you want to negotiate over it?
 - ▶ Will a non-precedential agreement work?
 - ▶ Will the Association say thank you?
 - ▶ If they haven't used it yet.....

Families First Coronavirus Response Act (“FFCRA”)

Employers with under 500 employees are covered

All public employers are covered by these acts

The provisions currently expire effective December 31, 2020.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

E-FMLA grants up to 12 weeks of leave to employees unable to work or telework due to the bona fide need to care for a child under the age of 18 if the child’s school or childcare provider is closed or the childcare provider is unavailable due to a COVID-19 emergency

- through December 31, 2020

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

- ▶ E-FMLA applies to employees employed over 30 days, whether full or part-time
- ▶ Dispenses with minimum hours of work requirement of FMLA
- ▶ First 10 days of leave is unpaid **unless** the employee is eligible for EPSLA leave or elects to use accrued time
- ▶ After 10 days the employee is paid 2/3 of the regular rate of pay up to a maximum of \$200 per day to a maximum of \$10,000

EMERGENCY PAID SICK LEAVE ACT

Employers must provide paid COVID sick time for employees unable to work or telework due to:

- ▶ 1. Employee is subject to quarantine or isolation order;
- ▶ 2. Employee has been advised by health care provider to self-quarantine because of exposure;
- ▶ 3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

EMERGENCY PAID SICK LEAVE ACT Continued

Employers must provide paid COVID sick time for employees unable to work or telework due to:

- ▶ 4. Employee is caring for an individual subject to 1 or 2 above
- ▶ 5. Employee is caring for a son or daughter whose school or place of care is closed, or the childcare provider is unavailable due to COVID-19; or
- ▶ 6. Employee is experiencing any other “substantially similar conditions” as specified by the HHS Secretary.

EMERGENCY PAID SICK LEAVE ACT Continued

- ▶ Full time employees are entitled to 80 hours of leave; part-time employees are entitled to the average hours worked over a two-week period
- ▶ Leave under 1,2 or 3 above is paid at the employee’s regular rate of pay up to a maximum of \$511 per day
- ▶ Leave under 4,5 or 6 above is paid at 2/3 or the regular rate of pay to a maximum of \$200 per day

EMERGENCY PAID SICK LEAVE ACT Continued

- ▶ EPSLA leave is available for use immediately
- ▶ No 30 day service requirement
- ▶ Employer cannot require use of paid leave first
- ▶ Leave does not diminish rights under law, employer policies or collective bargaining agreements

New Jersey COVID-19 Leave Legislation

On March 25, 2020, the Governor signed legislation increasing the wage-replacement benefits under the New Jersey temporary disability (TDI) laws and under NJ Family Leave Insurance (NJFLI) to include coverage of leave related to the Coronavirus.

- ▶ The TDI legislation expands disability payments to employees who can't work because they contracted, were exposed to or quarantined due to the virus.

New Jersey COVID-19 Leave Legislation

Family Leave Insurance

- ▶ The amended NJFLI offers wage assistance to employees who can't work because they must care for a family member with a serious health condition, which now includes a state of emergency with directed quarantine or isolation.
- ▶ Retaliation for absences related to an infectious disease is prohibited.
- ▶ No expiration date on this amendment