

## **Sections**

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## **General Questions**

**\*Please note that our Q's and A's assume that The Larkin Company is your administrator for Leaves of Absence.**

### **1. Q: With everything that is going on, what is The Larkin Company's advice?**

A:

- a. Be easy on yourself! Our roles are challenging in normal circumstances and the best we can do is the best that we can do!
- b. Sign up for our newsletter if you are not already subscribed. These newsletters are also cross-posted on our [website](#) and on our LinkedIn page.
- c. Don't forget about the DOL's lengthy but incredibly useful [FAQ](#) sheet on the FFCRA. Utilize the search feature in your browser (CTRL+F) as it is nearly 80 questions and growing!
- d. Reach out to your Account Manager or [Compliance\\_Services@thelarkincompany.com](mailto:Compliance_Services@thelarkincompany.com)! We are here to support our clients in this difficult time.

### **2. Q: What are some optional policy/process changes that could help employees during this difficult time?**

A: Some considerations are:

- a. Extending the time frame for submission of certification for a leave of absence approval.
- b. Modifying paperwork requirements for leave of absence or claim approval.
- c. Modifying requirements for work release paperwork (the "Fitness for Duty").
- d. Reminding employees of video treatment options and directing them to these resources.
- e. If you wish to discuss these or any other benefit changes further, please contact your Larkin Account Manager. For example, though modifying the work release process may appear like a simple solution to help employees, we would wish to discuss this with you, as we not only recommend that you apply this to all leaves (not just those for employees on leaves related to COVID-19) but that you carefully consider whether you are comfortable with the potential risks associated.

- 3. Q: Is there a different process to follow when a California employee is exposed to or disabled by COVID-19? Will Larkin note to waive the STD/VDI waiting period?**

A: If we are made aware that the disability is related to COVID-19, we can notify our clients accordingly. Please note that our Administrator may not have this information, as Medical Leave Certification in California does not ask the health care provider to include “Relevant Medical Facts,” which could identify that the leave of absence is related to COVID-19. However, if aware, the administrator will advise the employee that EDD/VP will waive the 1-week waiting period for DI benefits for those sick or exposed to COVID-19. Additionally, the EDD will accept virtual visits with a healthcare provider although certification is still required.

- 4. Q: We have an employee who just came back from a cruise this week. We are currently asking him to stay home for 14 days before returning to work in the office. He is a manufacturing employee, and he is not able to work remotely. Do you know if EDD provides any benefit for this situation?**

A: If your company has fewer than 500 employees, the employee could access two weeks of sick pay under the ESPL (described below). If you have over 500 employees and the employee is not eligible for the emergency sick pay, the EDD allows employees to file for unemployment benefits in situations such as this. We could track as a personal leave only if requested by the client. You can elect as the employer to pay that employee, but we would encourage our clients to consider applying a consistent practice to employees whenever possible.

- 5. Q: We are looking at potentially asking employees to work from home. If that happens – what are the guidelines for any of our employees currently on a protected leave of absence (FMLA, NY PFL, etc.). Do those “clocks” keep ticking or do they pause?**

A: Employees on medical leave should remain on leave until cleared to return to work. Employees on other leave types may choose to end their leaves early and begin working from home, which would “stop the clock” on their usage of protected time away. Any employee on leave or with an upcoming leave should be encouraged to reach out to their leave administrator if they wish to change their plans.

- 6. Q: How will ADA come into play with COVID-19 related absences?**

A: The EEOC established a resource page to capture all EEOC materials related to COVID-19 at <https://www.eeoc.gov/coronavirus/>. The latest information from the EEOC is that “it is unclear” whether COVID-19 is considered a disability under the ADA. However, if an employer believes that an employee has COVID-19, the employee can be barred from the workplace because of the “direct threat” that COVID-19 creates for the

employee and others. Also, if there is an underlying medical condition that increases the risk of severe illness should they contract COVID-19, the employer is obligated to engage in the interactive discussion process to identify what accommodations are reasonable to mitigate the risk of contracting the illness through work. A few other key points from the EEOC:

- The ADA does not interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps employers should take regarding COVID-19.
- The same employer obligations and criteria apply during this pandemic.
- During this pandemic, an employer should consider granting temporary accommodations while documentation is pending. Be as flexible and creative as possible.

**7. Q: How would the diagnosis of COVID-19 affect potential disability payments? Should an employee contract COVID-19 and be unable to work, would this qualify for disability payments? Have you seen employers relinquish the substantiation process to allow employees to self-certify their disability due to COVID?**

A: If an employee is disabled due to COVID-19 and is unable to work, they can file a disability claim. This should be certified by a health care provider whenever possible.

Employers may wish to accept alternative certifications for claim approval if employees are not able to get the Attending Physician's Statement completed. If The Larkin Company administers a disability plan for you, please contact your Account Manager to discuss this topic further.

If it is a California employee filing for SDI, they do still need to furnish certification, which can also be sent to Larkin to approve the leave and/or STD claim. Other states are putting measures in place to provide flexibility, and the Larkin newsletter is providing updates routinely as we are made aware of these changes.

**8. Q: If we wish to create our own leave type to engage Larkin in tracking leaves of absence that do not qualify under EPSLA or EFMLEA, what guidance would The Larkin Company provide?**

A: We have not observed a trend of clients creating a policy to accommodate time away that is not otherwise covered under existing leave types or required by the emerging laws. We would recommend engaging your internal or external counsel if considering implementing a leave type specific to COVID-19 and contacting your Larkin Account Manager, as well.

## **Emergency FMLEA**

### **1. Q: What is the EFMLEA and when does it apply as opposed to EPSLA?**

A: EFMLEA is the Emergency Family and Medical Leave Expansion Act. The law applies when an employee (whose employer has fewer than 500 US employees) requires leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. If you are subject to the EFMLEA, The Larkin Company will track the time away from work for employees requiring time for this specific leave type, and you can direct employees to their Administrator to begin the leave process as with any other leave type that we track for you. If The Larkin Company otherwise administers your Leave of Absence Pay program, and you wish to allow employees to take this leave under your Paid Family Care Leave program, The Larkin Company can assist with providing pay vouchers for the time. Otherwise, income replacement would be calculated and provided by the employer if they are covered under the EPSLA.

EPSLA is a pay provision (again for employers with fewer than 500 US employees) which provides income during EFMLEA, along with income during leave related to quarantine, suspected COVID-19 infection, or caring for a relative who is quarantined or isolated. Employees who provide medical certification related to their own COVID-19 illness or a family member's COVID-19 illness can receive EPSLA during their FMLA leave. All employees are eligible for EPSLA, while employees must have been employed for at least 30 days in order to be eligible for EFMLEA. Under Larkin's standard process, we would administer leave related to an employee's own illness (and thus requiring a medical leave) or a family member's COVID-19 illness (and thus requiring a family care leave). Any income replacement provided by the EPSLA would be provided directly by you as the employer; however, if we are your administrator for Leave of Absence Pay, we can set up and administer EPSLA pay for an additional fee. However, leave (and pay) related to quarantine, suspected COVID-19 infection, or caring for a relative who is quarantined or isolated should be tracked (and paid) internally by the client.

Please see the chart below that we have created to help illustrate the differences:

	Emergency Paid Sick Leave Act (ESPLA)	Emergency Family and Medical Leave Expansion Act (EFMLEA)
<b>Employee Eligibility</b>	Day 1 of employment – PT, FT, Temporary or seasonal employees are included	30 calendar days of employment – FT or PT employees covered
<b>Leave Duration</b>	2 weeks	12 weeks (total of EFMLEA and FMLA)
<b>Reason for taking leave</b>	<p>Employee is unable to work or telework due because the employee:</p> <ol style="list-style-type: none"> <li>1. is subject to a Federal, state, or local quarantine or isolation order related to COVID-19;</li> <li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li> <li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li> <li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li> <li>5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; <b>This is the only reason that can be ESPLA and EFMLEA</b> or</li> <li>6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.</li> </ol>	<ol style="list-style-type: none"> <li>1. Employee is caring for a son or daughter whose school or place of care is closed due to COVID-19 precaution</li> </ol>

<b>Pay Amount &amp; Duration</b>	<b>Reasons #1, 2, &amp; 3</b> are paid at 100% of the employee's wages (up to \$511/day)  <b>Reasons #4, 5, &amp; 6</b> are paid at 2/3rds of the employee's wages (up to \$200/day).	12 weeks paid – first 2 weeks are paid under ESPLA, remaining 10 weeks paid under EFMLEA—same rate (2/3rds of wages up to \$200/day)
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**2. Q: We have fewer than 500 employees. Does the EFMLEA count against the 12 weeks of FMLA or is it in addition to?**

A: Any leave taken under the expanded FMLA provision of the FFCRA will count towards an employee's 12-week leave entitlement. The Larkin Company will monitor usage to ensure employees taking leave under the EFMLEA do not receive more leave than they are entitled to.

**3. Q: What are the benefit caps for EPSLA and EFMLEA? Are Larkin clients adhering to the caps or paying 100% salary?**

A: The EPSLA provides 80 hours of sick time when an employee is unable to work (or telework) because of a quarantine or isolation order (federal, state, or local order or advisement of a health care provider); the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; the employee is caring for a relative who is quarantined or isolated; or, their child's school or child care service is closed because of COVID-19. This is capped at \$511 per day for an employee's own care and \$200 per day when the employee is caring for a relative or child (including school closures).

EFMLEA provides 12 weeks of job-protected FMLA leave to employees who have been on payroll for at least 30 calendar days – this leave is for a “qualifying need related to a public health emergency” which is limited to when an employee is unable to work (or telework) because their minor child's school or child care service is closed due to a public health emergency. The first 10 days of this leave can be unpaid, paid via the EPSLA if available, or an employee may opt to substitute accrued vacation, personal, or sick leave during this time (employers may not require an employee to do so). Thereafter, the remaining 10 weeks must be paid, generally at two-thirds of the employee's regular rate for the number of hours the employee would otherwise be scheduled to work. The benefit is capped at \$200 per day (or \$10,000 total).

Larkin has not seen a trend of clients paying 100% salary instead of observing the benefit caps. One factor may be that the tax credit associated with these benefit payments only applies to benefits paid up to the capped level.

4. **Q: We have more than 500 employees, per the [DOL definition](#). How does this law affect larger employers? How should larger employers handle COVID-19 related leave requests? Any thoughts on the daycare/school closures?**

A: The EFMLEA does not apply to larger employers. However, a small number of our clients are making adjustments to accommodate employees facing COVID-19 related challenges.

### **Emergency Paid Sick Leave Act**

**Q: What is the Larkin Company's role in the EPSLA if, due to our headcount, we are required to comply with the regulation?**

A: The Act provides paid sick time to employees that qualify for one of six reasons for time away, outlined above:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
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);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

For reasons 1-4 or 6, the employer would administer this internally until the entitlement exhausts and would refer the employee to the appropriate Larkin Administrator if the employee requires additional time and requires a leave of absence that would otherwise fall under the definition of existing leave types that were administered prior to COVID-19 (for example, the employee had a serious health condition or a family member had a serious health condition and required care by the employee). However, the Larkin Company can now track this time away from work. If you wish to have us partner with you on this leave type and it is not currently set up for us to do so, please contact your Account Manager to discuss next steps.

For reason 5, the employee should be referred to The Larkin Company on the first day of leave, as this reason coincides with the EFMLEA expansion, and The Larkin Company administers all leaves of absence provided under FMLA or state equivalent laws. There

is no start-up conversation needed as this is an expansion under FMLA, which is a leave type that The Larkin Company currently tracks.

**5. Q: If we are a company with under 500 employees, would STD/LOA Pay be offset by the extended FMLA provisions under the Families First Coronavirus Response Act? What is The Larkin Company's role in coordinating?**

A: Our understanding of the regulation, in the absence of absolute guidance, is that the EPSL benefit comes first with any additional benefit (LOA Pay or a disability benefit) potentially topping up the EPSLA, if the EPSLA does not cover up to the full amount of the other benefits.

**6. Q: If an employee exhausts their EPSLA entitlement, would they then apply for Unemployment Insurance or Disability Insurance?**

A: If their position does not allow them to work from home and they are not disabled, they can apply for UI benefits. If they are disabled, they can file for disability benefits to which they may be entitled.

**7. Q: Will Larkin track a leave for an employee who is quarantined and not working?**

A: If you have fewer than 500 employees, you are required to pay up to 80 hours of sick time under the EPSLA. The Larkin Company can indeed track this leave type if you wish. If you would like to have us track EPSLA time away and do not currently have The Larkin Company doing so, please contact your Account Manager. If you have more than 500 employees, the time could be paid via PTO or any other income replacement options that may be available, such as unemployment insurance.

**8. Q: If our company is subject to the EFMLEA and EPSLA, what are your recommendations for anyone who needs to be out longer than the time provided under these benefits?**

A: If additional leave is needed, we would proceed to process as with any other leave provided the conditions were otherwise met. For example, if an employee was quarantined and exhausted their EPSLA entitlement, but had developed a serious health condition in quarantine, that time may be tracked under as part of medical leave of absence. Otherwise, in the absence of a reason for leave that would otherwise qualify for a leave of absence—if for example that employee remained quarantined and healthy but could not work from home, and required more time than the EPSLA allows—it would be the employer's decision to what extent they would accommodate additional time. We have not noticed a trend when it comes to what employers are or are not accommodating.