

Featured Professionals

Brian T. Benkstein

Related ServicesEmployment, Labor &
Benefits**Employment Question of the Day: April 7, 2020****Legal Update**

04.07.2020

By Brian T. Benkstein

Question**How do the FFCRA Emergency Paid Sick Leave and Emergency Family Medical Leave Act provisions work together?****Answer**

In limited circumstances, an employee may be entitled to receive Emergency Paid Sick Leave (EPSL) and Emergency Family Medical Leave Act (E-FMLA) benefits **concurrently**.

By way of brief background, employees can receive up to two weeks of EPSL for six different reasons related to COVID-19. One of those qualifying reasons is because the employee is caring for his or her son or daughter whose school or place of care has been closed for a period of time because of COVID-19. When the need arises, an employee may access these benefits immediately – there is no waiting period. EPSL in this circumstance entitles the employee to two-thirds of her pay.

Under E-FMLA, employees may be permitted to take up to a total of 12 weeks of leave for just one reason, i.e., the employee is caring for a child whose school or care provider is closed, which, as noted, is also a reason for taking EPSL. Under E-FMLA, the first 10 days of child care leave are unpaid. However, if an employee has EPSL benefits available, she may use those benefits for the otherwise unpaid time under E-FMLA because the laws overlap with respect to a child care reason for leave. And, that is how and why the EPSL and E-FMLA paid time benefits run concurrently. The concept is illustrated by the following example:

Employee, who has been employed for more than 30 days, has a child whose school has shut down due to COVID-19 and remains closed for six weeks. The employee, a single father, must stay home with the child and cannot telework during this time. Because the school closure is a qualifying reason for leave under both EPSL and E-FMLA, the employee is entitled to the full six weeks of paid leave. The first two weeks are paid as EPSL, and the remaining four weeks are paid pursuant to E-FMLA. All of the paid time is at two-thirds the employee's rate because it involves a

child care-related reason for leave.

Takeaway

The **only** circumstance an employee will qualify for EPSL and E-FMLA benefits concurrently is when an employee cannot work because of a COVID-19 related school or child care closure. In this scenario, the paid time off is at two-thirds the employee's regular rate (and specifically not 100 percent). Although EPSL benefits are available in five other situations, there will be no overlapping E-FMLA coverage. However, do not forget that "classic" FMLA may still apply, depending on the employee's situation.

If you have questions or need assistance, please reach out to any member of the Employment & Labor Group.

[View All: COVID-19 Employment Question of the Day](#)