



## GBS Compliance

# Employees are Returning Following Furlough, FFCRA Leaves and Unemployment, Now What?

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*The evolution of the COVID-19 epidemic is constantly evolving. The information in this document is based on what known at this time. As things change, we will continue to update you as it affects employee benefits compliance rules.*

In response to the Covid-19 pandemic, the Families First Coronavirus Response Act (FFCRA) was enacted and signed into law in late March 2020. The new regulations became effective during the first week of April 2020

This document provides considerations and procedures to help employers prepare for pending completion of employee leave of absences, unemployment and furloughs. It is our hope to help you navigate the provisions under the federal Emergency Paid Sick Leave (EPSL), the Emergency Family Medical Leave Act (EFMLEA), Company policies, American's with Disabilities Act (ADA), Unemployment and EEOC (Equal Employment Opportunity Commission).

In the spirit of safety and prevention of the spread of the disease, federal, state and local governments recommend caution, prevention tactics, and flexibility in the leave of absence process. Employers are encouraged to continue accommodations allowing for remote work and providing flexibility regarding the full return of employees. Recommendations have also been communicated suggesting leniency in company attendance policies. This is especially important regarding workers in high-risk groups.

### Emergency Paid Sick Leave (EPSL)

Remember, the EPSL may be used through the end of the year 2020, with limitations. As qualifying events continue, employers must compile written evidence of each situation to provide the support documentation necessary to receive the tax credit. Tax credits may be received on a quarterly basis following the payments of EPSL, with a maximum yearly benefit of 80 hours.

Highlights of the FFCRA include the following. Federal paid leave will continue to cover qualified employees who are subject to quarantine or isolation orders, whether advised by a medical provider or subject to state, federal or local rule. In addition, the leave covers employee with COVID-19 symptoms who are seeking medical diagnosis as well as those caring for a qualified individual. The 80 hours of pay is paid at 100% regular rate generally but is paid at 2/3 of the regular rate if the employee is caring for a qualified individual.

### EFMLEA / FMLA

Employees are allowed a combined maximum of 12 weeks leave of absence over a designated 12-month period under these federal acts. An employee who has taken 4 weeks of FMLA

during the year prior to the pandemic would be permitted up to 8 weeks of FMLA or EFMLEA during the current pandemic. It is important that employers carefully track the amount of time each employee has taken and communicate in writing two weeks prior to exhausting the FMLA or EFMLEA benefit. This communication will prevent surprises at the end of the leave process and help employees prepare to return.

Leave under the EFMLEA is contingent on school or daycare closures. This is critical when considering the end of the school year. The end of May and early June mark the year end for many schools operating on a traditional year. The federal Department of Labor (DOL) has issued a written FAQ found at: [FFCRA FAQ's](#), addressing this scenario. The question posed is, “May an employee take expanded family and medical leave to care for school aged children while their school is closed for summer vacation?”

The short answer is no. Emergency family and medical leave are not available for this qualifying reason if the school or childcare provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, the employee may be able to take leave if his or her child’s care provider during the summer—a camp or other programs in which the employee’s child is enrolled—is closed or unavailable for a COVID-19 related reason.

If a daycare continues to be closed during the summer the employer has the right to request documentation regarding the closure. Traditional FMLA practices allow for re-certification or verification of information following 30 calendar days.

## Furloughs

The ease in which an employee returns from furlough is one of the primary reasons to consider this vehicle. A simple communication can be used to return them to work. Rehire paperwork and processing are not typically needed when returning a furloughed employee.

## Company Policies

Consider company leave policies and past practice when returning employees to work. If additional time off has been allowed in the past following FMLA for instance, the company will want to be consistent in offering time now. Remember to assess the situation to determine whether an employee disability is involved. Sample addendum language to be used in conjunction with your current written leave of absence policy is available at [gbsbenefits.com](https://www.gbsbenefits.com).

## ADA

We have received reports of employees experiencing disability as defined under the ADA during the pandemic. With the stress and fears related to the pandemic we are seeing many instances where employees are fearful regarding their return to work. In some instances, this trepidation has manifested itself in anxiety or mental illness. It is important to remember an employee may be suffering from a disability. Consideration and ADA steps must be applied, even when the maximum of 12 weeks FMLA have been granted.

When an employer is faced with a disability situation, the basic requirements include the following:

- a) An interactive discussion with the employee regarding the disability.
- b) Steps must be taken to address the situation including the research of possible ‘reasonable accommodations’ under the Act. The best place to start is found at [www.askjan.org](http://www.askjan.org), the EEOC recommended site for job accommodations.
- c) Reasonable accommodation must be offered, and it is a best practice to offer multiple accommodations.

Granting time off under the FMLA or EFMLEA is NOT considered a workplace accommodation. For an employee experiencing a disability related to the fear of returning to work an extension of telework or additional unpaid time off may be in order. The organization should consider past practice. For example, if unpaid time off was granted in the past to other employees (childbirth and delivery is a good example of a disabling event), then similar leave should be considered.

Remember to create a timeline and carefully document communications and interactive meetings with employees who may be experiencing a disability.

## **Unemployment**

For those employees receiving unemployment compensation the return to work offer should be in writing. The additional federal unemployment assistance of \$600 per week is designed to support the unemployed workers through the month of July 2020 if necessary. Some American workers may be receiving more income each week than when they were working prior to the pandemic. In this scenario, we have seen employees who have resisted or declined the offer to return to work. Unemployment compensation is designed to provide safety and security during this time. An individual receiving a written offer to return to work must accept the offer or run the risk of losing employment and unemployment compensation. It is the duty of the employer to communicate to the state department of workforce services, the employee's refusal of the offer.

One option that may benefit the employer and the employee is a part-time return to work offer. A part-time offer may allow the employee to return sooner and may allow them to extend their unemployment benefits including the federal incentive. Consider this when returning employees to the workforce.

## **Equal Employment Opportunity Commission (EEOC)**

EEOC guidelines continue to provide employees with overarching law to prevent discrimination in any employment decisions. This includes the process of returning employees to work. These decisions must never be based on any protected class or group.

## **Assistance**

Know that GBS Benefits is at-the-ready to support you with these challenges and complex scenarios. We are committed to helping you support your employees while staying fully compliant. We welcome your questions and feedback.

*The information is provided as educational material only and is not intended as legal, financial or tax advice. Consult your legal counsel for complete details on your compliance requirements for your plan(s).*

