



Families First Coronavirus Response Act: Lunch and Learn Webinar

This webinar will begin promptly at noon

This presentation has been prepared by Boy Agnew Potanovic, PLLC for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. For questions specific to your own situation, please consult counsel of your choice.



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The background of the slide features a dark, textured surface populated with numerous 3D renderings of coronavirus particles. These particles are spherical with prominent, irregular spikes extending from their surfaces. They are distributed across the frame, with some appearing in sharp focus in the foreground and others blurred in the background, creating a sense of depth. The overall color palette is dark, with the particles rendered in shades of grey and white against a black or very dark blue background.

Families First Coronavirus Response Act

- Emergency Family and Medical Leave Expansion Act (E-FMLA)
- Emergency Paid Sick Leave Act (E-PSLA)

Questions and Answers

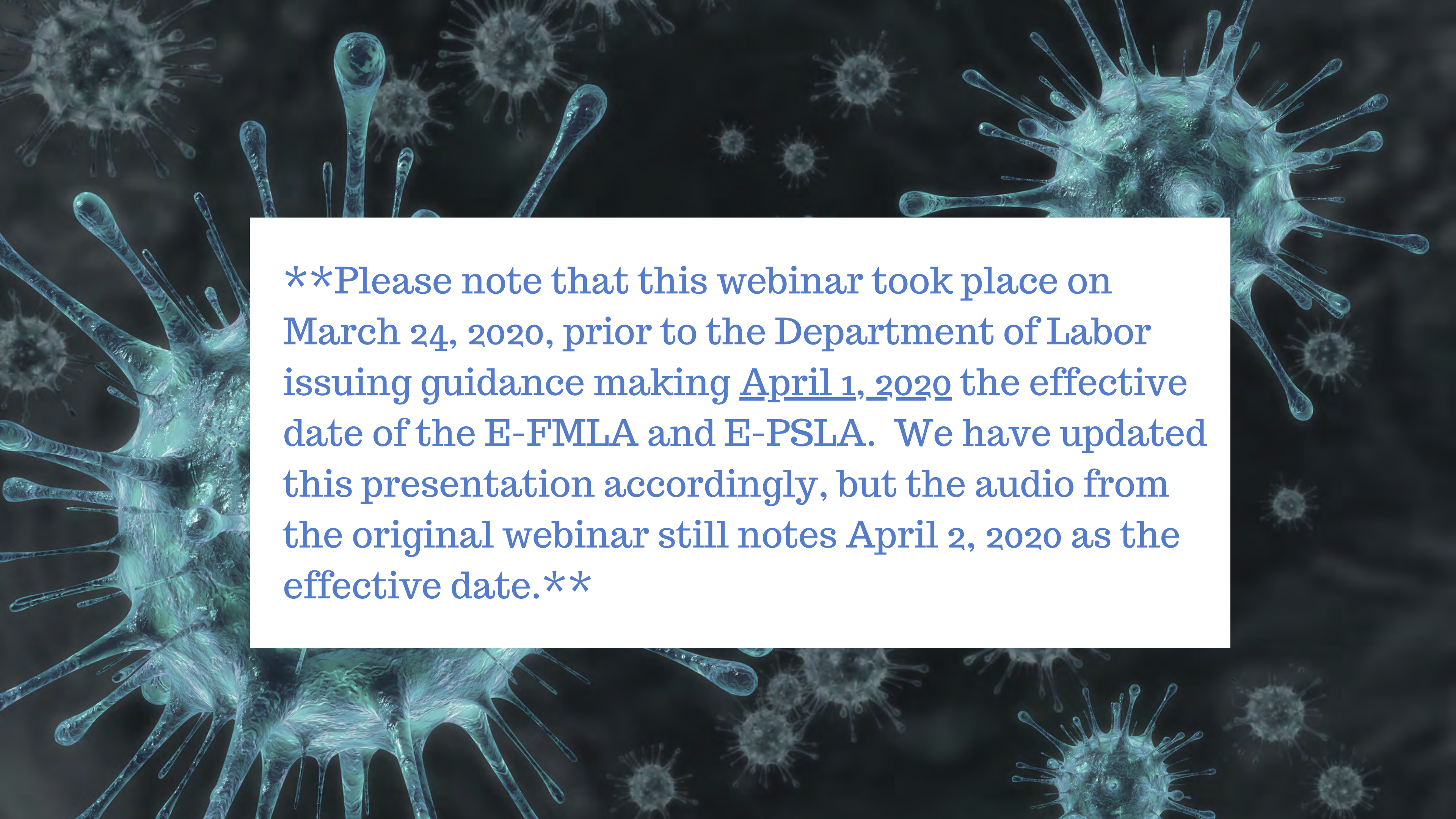
- Pre-submitted
- Chat, time permitting

AGENDA

The background of the entire image is a dark, textured field filled with numerous microscopic, virus-like structures. These structures are primarily spherical with many thin, radiating spikes or filaments. Some structures are larger and more detailed, showing internal components or more complex surface features, while others are smaller and simpler. The overall color palette is dark, with shades of black, grey, and a hint of light blue or green, giving it a scientific and somewhat ominous appearance.

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The background of the slide is a dark, textured surface populated with numerous microscopic, virus-like particles. These particles are depicted in shades of teal and light blue, featuring spherical bodies with prominent, radiating spikes or filaments. Some particles are larger and more detailed, while others are smaller and more blurred, creating a sense of depth. The overall aesthetic is scientific and clinical.

****Please note that this webinar took place on March 24, 2020, prior to the Department of Labor issuing guidance making April 1, 2020 the effective date of the E-FMLA and E-PSLA. We have updated this presentation accordingly, but the audio from the original webinar still notes April 2, 2020 as the effective date.****



Families First Coronavirus Response Act

Effective Date: April 1, 2020

Covered Employers:

- Private employers with fewer than 500 employees
- Public employers

Employee Eligibility:

- E-PSLA (paid sick leave): eligible immediately upon hire
- E-FMLA (paid FMLA leave): eligible after 30 days of employment

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Exceptions for Small Employers:

- Employers with fewer than 50 employees may seek exemption if the paid leave requirements "jeopardize the viability of the business"
- Employers with fewer than 25 employees are exempt from FMLA restoration obligations if the position no longer exists and they make reasonable efforts to rehire the employee for up to one year

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Exceptions for Health Care Providers/Emergency Responders:

- An employer of an employee who is a health care provider or an emergency responder MAY ELECT to exclude SUCH EMPLOYEE
- The Secretary of Labor MAY issue regulations to exclude certain health care providers or emergency responders

Emergency Paid Sick Leave Act (E-PSLA): Reasons for Leave

Employee is unable to work (or telework) due to:

1. Employee is subject to a COVID-19 related federal, state, or local quarantine or isolation order
2. Employee has been advised by a health care provider to self-quarantine due to COVID-19
3. Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis
4. Employee is caring for an individual subject to (1) or (2) above
5. Employee is caring for a son/daughter if the child's school/childcare is closed due to COVID-19
6. Employee is experiencing any other substantially similar condition specified by Secretary of Health in consultation with Secretary of Treasury and Secretary of Labor

Emergency Paid Sick Leave Act (E-PSLA): Paid Leave Amounts/Limits

Amount of Paid Leave:

- Full-time employees: up to 80 hours
- Part-time employees: the number of hours they work on average in a two-week period

Amount Depends on Reason for Leave:

- For reasons (1)-(3), employees receive their regular rate
- For reasons (4)-(6), employees receive 2/3 their regular rate

Paid Leave Caps:

- For reasons (1)-(3), paid leave shall not exceed \$511/day and \$5,110 aggregate
- For reasons (4)-(6), paid leave shall not exceed \$200/day and \$2,000 aggregate

Emergency Family and Medical Leave (E-FMLA): Reason for Leave

Employee is unable to work (or telework) due to:

- A need for leave to care for a son/daughter under 18 years of age if the child's school/childcare is closed due to COVID-19

Emergency Family and Medical Leave (E-FMLA): Paid Leave Amounts/Limits

Amount of Paid Leave:

- First 10 days are unpaid (but employee may substitute E-PSLA or other paid leave)
- After that, up to 10 weeks paid at 2/3 regular rate of pay

Paid Leave Cap:

- Paid leave shall not exceed \$200/day and \$10,000 aggregate

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Tax Credits:

- Employers receive 100% reimbursement for paid leave under FFCRA
- An immediate dollar-for-dollar offset against payroll taxes will be provided
- Where a refund is owed, the employer may file a request for an accelerated refund, which the IRS promises to send "as quickly as possible"

IRS Example:

- If employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes (including employee taxes), the employer can use \$5,000 of the payroll taxes it was going to deposit
- If employer paid \$10,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, employer could use the entire \$8,000 in payroll taxes, then file request for an accelerated refund for the remaining \$2,000



Question:

We are a medical practice, so we are exempt from providing paid leave under E-FMLA or E-PSLA, right?

Who is a "health care provider" that may be excluded from E-FMLA and E-PSLA?



Question:

Does the E-PSLA work in conjunction with E-FMLA? One says \$200/day up to \$2,000 while the other says \$200/day up to \$10,000. Do we do both or one or the other?



Question:

Can I reduce an exempt employee's salary because of a downturn in business?

Question:

Can I reduce a non-exempt employee's number of hours and/or hourly rate because of a downturn in business?

The background of the slide features a dark, textured surface populated with numerous microscopic, virus-like particles. These particles are depicted with greenish-yellow, spiky exteriors and some have long, thin, translucent appendages extending from them. The overall aesthetic is scientific and clinical, with a focus on biological structures.

Question:

Does the 500 employee threshold apply to individual locations of a company's employees, or the total employee count for all locations?

The background of the slide features a dark, almost black, space filled with numerous microscopic, virus-like particles. These particles are depicted in shades of teal and light blue, giving them a glowing appearance. They vary in size and shape, with many having a spherical core and long, thin, hair-like spikes extending from the surface. Some particles are more complex, with multiple spikes or a more irregular, star-like structure. The overall effect is a dense, ethereal field of these microscopic entities, creating a sense of depth and complexity.

Question:

What if I have over 500 employees now, but under 500 during the off-season (or after upcoming layoffs)?

The background of the slide is a dark, textured image featuring various microscopic organisms. There are several spherical viruses with prominent spikes, resembling coronaviruses, scattered throughout. Interspersed among these are elongated, rod-like structures that look like bacteria or perhaps cilia on a cell surface. The overall color palette is dark with hints of blue and green, giving it a scientific and somewhat ominous feel.

Question:

*Can we furlough employees while business is slow?
If so, how does that work, and what are the
implications of doing so (i.e. unemployment,
company financial obligations, health insurance,
WARN Act, etc.)?*



Question:

If I have to lay employees off, am I required to recall them if they are not eligible for E-FMLA?

A microscopic view of various viruses, including coronaviruses, against a dark background. The viruses are depicted with green and blue hues, showing their characteristic spiky surfaces and some with prominent spike proteins.

Question:

If an employee is laid off before April 1, 2020, is the employee still entitled to paid leave under E-FMLA or E-PSLA?

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Question:

If we are volunteering to pay our staff now even though our facility is closed, can we count this money towards the new paid leave requirements?

The background of the slide features a dark, textured surface populated with numerous microscopic, virus-like particles. These particles are depicted with greenish-yellow, spiky exteriors and some have visible internal structures. They are scattered across the frame, with some appearing larger and more detailed than others, creating a sense of depth and a clinical or scientific atmosphere.

Question:

Does reason #1 under E-PSLA include government mandated quarantine as well as quarantine by a medical professional?

What about a "stay-at-home" or "shelter in place" order by the state?

Question:

To clarify, can an employee get paid sick leave under E-PSLA for any of the six reasons, but only paid leave under E-FMLA to stay home with a son/daughter who is out of school/daycare?

Is an employee still entitled to E-FMLA if the school is offering remote/online learning?

Does "son or daughter" include step-children?



Question:

Is an employee entitled to E-FMLA or E-PSLA if we are offering remote work?

The background of the slide features a dark, textured surface populated with numerous microscopic, virus-like particles. These particles are spherical with prominent, thin, hair-like spikes extending from their surfaces. Some particles are in sharp focus, while others are blurred in the background, creating a sense of depth. The overall color palette is dark, with the particles appearing in shades of grey and light blue/white.

Question:

If a company cuts pay before April 1 and employees subsequently become eligible for paid leave, is paid leave at the prior salary/hourly rate or the reduced salary/hourly rate?



Question:

Does paid leave under E-FMLA/E-PSLA include gratuities, bonuses, commissions, etc.?

The background of the slide features a dark, almost black, space filled with numerous microscopic, virus-like particles. These particles are depicted in various sizes and orientations, some showing a spherical core with radiating spikes, while others are more elongated or have a different internal structure. The overall effect is a complex, textured pattern that suggests a microscopic or biological environment.

Question:

Does an employee who has to care for a child home from school/daycare get 80 hours of paid sick time plus 2/3 pay for 12 weeks?

The background of the slide features a dark, almost black, space filled with numerous microscopic, virus-like particles. These particles are depicted in shades of teal and light blue. Some are spherical with prominent, thin, radiating spikes, while others are more elongated or have a different, less symmetrical structure. The lighting gives them a three-dimensional appearance, with some parts being brighter than others, creating a sense of depth and movement. The overall effect is a scientific and somewhat ominous visual theme.

Question:

Does the E-FMLA require us to pay FMLA that is used for any reason other than staying home with a child due to school/daycare closure?

A detailed microscopic image of various virus particles, including spherical ones with spikes and elongated, rod-like ones, set against a dark background.

Question:

Is the new paid E-FMLA in addition to FMLA already used prior to April 1, 2020? In other words, does an employee get previous FMLA plus E-FMLA?

The background of the slide features a dark, almost black, space filled with numerous green, spiky, spherical particles that resemble viruses or bacteria. These particles are of various sizes and are scattered across the frame. A solid blue rectangular box is positioned in the center-left area, containing white text. The overall aesthetic is scientific and clinical.

Question:

What documentation can we require for an employee to prove he/she is entitled to paid leave?

A detailed microscopic illustration of COVID-19 virus particles. The background is dark, with numerous spherical virus particles scattered throughout. Each particle is covered in a dense layer of green, hair-like spikes (glycoprotein spikes) that radiate outwards. Some particles are in sharp focus, showing the intricate structure of the spikes and the underlying viral envelope, while others are blurred in the background, creating a sense of depth. The overall color palette is dominated by dark blues, greys, and the vibrant green of the spikes.

Question:

If an employee has been advised by his/her doctor to stay home but the employee has not been given a COVID-19 test, can I prohibit the employee from coming to work?



Question:

Can E-FMLA be used intermittently? For example, what if an employee needs to come in an hour late every day due to child care issues?



Question:

Are public entities covered by the E-FMLA and E-PSLA?



Question:

How does the tax credit work?

How will our payroll company know what hours/pay is for time related to E-FMLA/E-PSLA so we can ensure we get the credit?

Are private and public employers eligible for the tax credit?



Question:

We have a new employee who started last week. Is he covered by E-FMLA and E-PSLA?

The background of the slide features a dark, almost black, space filled with numerous green, spiky, spherical particles that resemble viruses or bacteria. These particles are of various sizes and are scattered across the frame. A prominent, larger, more detailed green virus-like particle is visible in the upper right corner, showing its complex structure with many long, thin spikes. Another large, similar particle is in the lower left corner. The overall effect is a scientific, microscopic theme. A solid blue rectangular box is positioned in the center-left of the slide, containing white text.

Question:

How does a small business apply for the under 50 employee exemption?



Question:

Are there any assistance programs for businesses that are severely impacted as a result of a government mandate or other COVID-19 related reasons?

Greater Fort Myers Chamber website:

www.fortmyers.org/covid-19-business-resources

Florida Disaster Resources:

www.floridadisaster.biz



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