

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT EMPLOYEE RETURN RIGHTS

Employees who return to the workplace from Emergency Paid Sick Leave Act (EPSLA) or Emergency Paid Family and Medical Sick Leave Act (EPFMLA) generally have the right to be restored to the **same or equivalent position** (pay, benefits, and other employment terms and conditions including shift and location) that they held when they went out on leave.

It is important to note that employees are not protected from employment actions, such as furlough layoffs, or reduction in force while on leave if the employer can show that the employees would have been impacted even if they had not taken leave. The employer must be able to show that an employee would not have otherwise been employed at the time the employee requests reinstatement in order to deny the employee restoration to employment.

The EPFMLA regulations confirm the restoration process does not apply to an employer who has fewer than 25 employees when **and** the employee took leave to care for a son or daughter whose school or place of care was closed or whose child care provider was not available;

1. Employee's position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of your leave;
2. the employer made reasonable efforts to restore you to the same or an equivalent position;
3. the employer makes reasonable efforts to contact you if an equivalent position becomes available; **and**
4. the employer continues to make reasonable efforts to contact you for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after your leave began, whichever is earlier.

FMLA "key employees" may be denied reinstatement if that denial is necessary to prevent substantial or grievous economic injury to the employer's operations.