

FFCRA Basics

What Does the Families First Coronavirus Response Act Mean for Employers?

Applies to: All Employers with fewer than 500 Employees

Effective: April 1, 2020

Beginning April 1, 2020, the Families First Coronavirus Response Act (FFCRA) will require employers to provide protected paid leave and paid sick leave to employees through December 31, 2020.

First, the FFCRA's **Emergency Family and Medical Leave Expansion Act** extends employee leave protections under the federal Family and Medical Leave Act (FMLA) as follows:

- **Applicability:** Private employers with fewer than 500 employees.
- **Eligibility:** Employees employed for 30 calendar days or more may request FMLA benefits for leave where the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.
- **Paid Leave:** The first 10 days of leave are unpaid after which the employer pays the following:
 - at least 2/3 of an employee's regular pay rate;
 - for the number of hours an employee is otherwise normally scheduled to work (for those with varying schedules, employers should use an average number of scheduled work hours over the six-month period just prior to the date of leave); and
 - up to a maximum of \$200 per day and \$10,000 in aggregate.
- **Duration of Leave:** The total leave allocation, including paid and unpaid portions, is the full 12-week benefit under existing FMLA rules.
- **Substitutions:** Employers may not require an employee to substitute any leave, but an employee can choose to substitute any accrued vacation, personal, or sick leave during the initial unpaid portion of the leave.
- **Restoration to Position:** This provision requires an employer to restore the individual to the position they held prior to the leave, except for employers with fewer than 25 employees if:
 - the employee's position is eliminated due to economic conditions or other changes in operating conditions of the employer that affect employment and are caused by a public health emergency during the period of leave; and
 - the employer makes reasonable efforts to restore the employee to an equivalent position, and, if unsuccessful, the employer makes reasonable efforts to notify the employee if an equivalent position becomes available within one-year following the leave.
- **Special Rule for Healthcare Providers and Emergency Responders:** An employer of an employee who is a healthcare provider or an emergency responder may elect to exclude such employee from this leave benefit.

Second, the FFCRA added the **Emergency Paid Sick Leave Act** for employee relief.

- **Applicability:** Private employers or individuals employing fewer than 500 employees, and public entities with one or more employees.
- **Eligibility:** Employers must provide paid sick time to employees who are unable to work, or telework, regardless of how long the employee has been employed by the employer, under the following circumstances:
 1. Federal, state, or local quarantine or isolation order related to COVID-19;
 2. Advice by a healthcare provider to self-quarantine due to COVID-19-related concerns;

3. Employee experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 4. Employee's need to care for an individual who is subject to an order or who has been advised to quarantine by a healthcare provider;
 5. Employee's need to care for a son or daughter if the school or place of care closes or is unavailable due to COVID-19 precautions; or
 6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services (HHS).
- **Compensation:** For reasons 1-3 above, employers must pay the greater of the employee's regular pay, the minimum wage in effect under FLSA, or the state/local minimum wage rate in effect, up to a maximum of \$511 per day and \$5,110 in aggregate. For reasons 4-6 above, employers must pay 2/3 of the greater of the employee's regular pay, the minimum wage in effect under FLSA, or the state/local minimum wage rate in effect, up to a maximum of \$200 per day and \$2,000 in aggregate.
 - **Duration:**
 - All employees, regardless of the length of employment, are entitled to:
 - 80 hours, if full-time; or
 - the average number of hours over a two-week period, if part-time.
 - Hours cannot carry over from one year to the next and paid sick time ends on the next scheduled work shift immediately following termination.
 - Employers who are healthcare providers or employers of emergency responders may elect to exclude such employees from this benefit.
 - Employers may not require an employee to:
 - search for a replacement employee to cover their hours as a condition of providing paid sick leave; or
 - use other paid leave provided by the employer before the employee uses sick time under this provision.
 - **Prohibitions and Enforcement:**
 - Violation is a failure to pay minimum wage under the Fair Labor Standards Act (FLSA) and be subject to fines.
 - Employers may not discharge, discipline, or discriminate against an employee who takes leave or has filed any complaint or proceedings with regard to this Act – employers willfully violating this will be subject to penalties of up to \$10,000, or up to six months imprisonment, or both.
 - **Notifications and Disclosures:**
 - To the extent an employee is planning on exercising leave for this purpose, they should notify their employer as soon as is practicable. Likewise, after the start of the leave period, an employer may require the employee to follow reasonable notice procedures to substantiate continued paid sick time payments.
 - Notices shall be posted in conspicuous places on the premises of the employer, where notices to employees (including applicants) are customarily posted; or in employee handbooks. The notice will be available by March 25, 2020.
 - **Exceptions:** The Secretary of Labor has the authority to issue regulations to exclude certain healthcare providers and emergency responders from the definition of eligible employee and to exempt small businesses with fewer than 50 employees if this provision will jeopardize the viability of the business

Employers providing paid leave and paid sick leave are entitled to tax credits against the payments made, subject to certain requirements. As implementation of these rules begins, Congress is already working on providing more assistance to help Americans. Continue to look for updates on this topic.

Action Items

1. Review the Act [here](#).
2. Have paid leave policies updated.
3. Prepare for employee leave requests beginning April 2nd.
4. Display required notice (available by March 25th).
5. Review your financial planning now.
6. Review your ability to comply with the FFCRA and isolation orders.