

# FFCRA: Families First Coronavirus Response Act

## What Businesses Need to Know

The Families First Coronavirus Response Act (FFCRA) was signed by President Trump on March 18. This new law went into effect on April 1, 2020 and it will remain in effect until December 31, 2020.

While the full legislative package includes many provisions, including free corona virus testing, food assistance and medical services budget increases, three aspects of the law apply chiefly to businesses. These broad changes include requiring some employers to provide paid sick leave, paid family and medical leave along with tax credits for the paid leave and expansion of unemployment insurance.

Importantly, the paid leave provisions apply only to businesses with fewer than 500 employees. If your business has fewer than 50 employees, you may be able to apply for an exemption from the Secretary of Labor if providing either of the types of paid leave could “jeopardize the viability” of your business, according to the U.S. Department of Labor.

## Emergency Family and Medical Leave Expansion Act

The first section of the FFCRA that applies to businesses pertains to an expansion of the U.S. Family and Medical Leave Act (FMLA). Until the end of 2020, employers with fewer than 500 employees will now be required to provide certain employees with up to 12 work-weeks of paid family and medical leave.

**1<sup>st</sup> 10 Days:** The first 10 days of leave *may* be provided unpaid. If so, an employee may elect to apply any available paid vacation leave, personal leave or medical or sick leave in order to be paid during this 10-day period.

**Remaining Time:** Shall be paid leave, as calculated below.

### Which employees are eligible?

Paid FMLA will be available to any employee who has been employed for at least 30 days *and who must care for children whose schools have closed due to the corona virus health emergency, or whose child care provider has become unavailable due to the health crisis.* The eligible employee must not be able work (or “telework”) while caring for children.

## **How are employees paid during this time?**

During paid leave, employees must be compensated not less than two-thirds of their regular rate of pay, nor more than \$200 per day or \$10,000 total for the full 12 weeks. (For employees who work on a variable schedule, the two-thirds calculation is based upon the average hours worked daily during the preceding six months.)

## **Return to work**

At the end of the leave, the employer must make reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave began, with equivalent benefits, pay and conditions of employment. If the position is not then immediately available, then whenever it becomes available within the next 12-months.

## **Are there exemptions?**

As mentioned above, businesses with fewer than 50 employees may be exempt from all of these requirements if they can prove that providing the leave would risk them going out of business. Other provisions of note include:

- Businesses with fewer than 25 employees are not required to reinstate an employee to their position after they return from leave, but all businesses with more than 25 employees must do this.
- Businesses with fewer than 50 employees are exempt from civil actions brought by employees for violations regarding emergency paid FMLA.

## **Emergency Paid Sick Leave Act**

The second leave provision of the FFCRA that affects businesses is emergency paid sick leave. Until the end of 2020, employers with fewer than 500 employees must offer paid sick leave to those who meet criteria associated with the public health emergency.

## **Which employees are eligible?**

The new FFCRA paid sick leave is available to any employee if they are unable to work (in-house or remotely) because they are:

- A** Subject to federal, state, or local quarantine or isolation related to COVID-19;
- B** Have been advised by their doctor to self-quarantine due to COVID-19;
- C** Experiencing symptoms of COVID-19 and seeking a medical diagnosis;

- D** Caring for a family member subject to a quarantine order or self-quarantine;
- E** Caring for children if schools are closed or their care-giver is unavailable because of the COVID-19 health emergency; or
- F** Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

## **How are employees paid during this time?**

**Full-time employees** can receive up to 80 hours (i.e., two work-weeks) of paid sick leave;

**Part-time employees** can receive pay based on the number of hours they would work during an average two-week period.

If an employee qualifies based reasons **A**, **B** or **C** above – i.e., they are sick and/or in quarantine – they receive sick leave at their regular rate with pay to a maximum of \$511 per day and \$5,110 total.

If an employee qualifies based on reasons **D**, **E** or **F** above – i.e., they are burdened with caring for someone sick or quarantined – they receive sick leave at two-thirds of their regular rate of pay with amounts not exceeding \$200 per day and \$2,000 total.

The Secretary of Labor is issuing more guidelines to help employers formulate leave benefits.

## **How does this impact sick leave that's already offered?**

Emergency paid sick leave is offered *in addition to* any existing sick leave and/or paid time off that is already offered by an employer.

## **Are there exemptions?**

Businesses with fewer than 50 employees may be exempt from all of these provisions if providing the leave could “jeopardize the viability” of their business.

## **Notice to employees required**

The Act requires that “Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements described in this Act.”

**A Department of Labor notice form is appended to this advice.**

Post the notice if possible. Obviously, if employees are working from home, they have no opportunity to see a physical posting. Email a copy of the notice to each employee who is working from home. (A copy of the notice is also available to be downloaded from AZSA's website for the purpose.)

## **Tax Credits for Paid Sick Leave and Paid FMLA**

To help employers afford the new paid sick leave and paid FMLA benefits, companies are able to seek reimbursement through tax credits.

Each quarter, private companies are entitled to fully refundable tax credits for both paid sick leave and paid FMLA. **The tax credits are applied against an employer's already-owed Social Security taxes, up to, but not more than, the amount of such taxes due.** However, if that offset is not enough to cover these pay-outs to employees, then the Treasury Department is authorized to help cover the rest with cash pay-outs. To this end:

- The Treasury is directed to issue regulations to waive penalties for businesses not submitting their payroll taxes if they do so in anticipation of a refund under the new law.
- The Treasury Department has said they will soon be releasing a form for small businesses to request an expedited advance on their refund.
- An employer's tax credit is increased by the amount the employer pays to maintain health care related to new sick leave and FMLA benefits. This will allow a company to maintain health care benefits while the employee is on leave.

# EMPLOYEE RIGHTS

## PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

### ► PAID LEAVE ENTITLEMENTS

**Generally, employers covered under the Act must provide employees:**

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$  for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at  $\frac{2}{3}$  for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

### ► ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.*

### ► QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

- |   |   |
|---|---|
| <ol style="list-style-type: none"><li>1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li><li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li><li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li><li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li></ol> | <ol style="list-style-type: none"><li>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li><li>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li></ol> |
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### ► ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

For additional information  
or to file a complaint:  
**1-866-487-9243**  
TTY: 1-877-889-5627  
[dol.gov/agencies/whd](https://dol.gov/agencies/whd)



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