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**UPDATED 03/26/2020.** The Families First Coronavirus Response Act (FFCRA) will go into effect **April 1** (one day sooner than initially reported) and sunset **December 31, 2020**. The law applies to all private sector employers with under 500 employees and government entities. There are two key provisions in the law that impact employees who may need leave due to the COVID-19 pandemic.

## **The Emergency Family and Medical Leave Expansion Act under the FMLA**

The FFCRA expands the FMLA to provide **12 weeks** of emergency job-protected partially paid leave for employees who qualify.

- Employees are eligible if they cannot work (or telework) because the employee has to care for a child (under 18) because:
  1. the child's school or child care location is closed due to a public health emergency with respect to COVID-19; or
  2. the child care provider for the child is unavailable due to a public health emergency with respect to COVID-19.
- Employees must have worked for 30 calendar days to qualify.
- The first 2 weeks of the leave are unpaid, but the employee has the option to elect to use any accrued paid time off (the employer cannot require it) and the employee will qualify for two weeks of emergency paid sick leave paid at 2/3 the employee's regular wages (see below).
- The next 10 weeks are paid at **2/3** of the employee's regular rate of pay for the hours normally scheduled to work (for employees with a variable schedule, use a 6-month average or a reasonable projection). The 10 weeks are subject to a cap of \$200 per day and \$10,000 total.
- Employees need to provide notice to employers of the need for leave as soon as "practicable" when the leave is foreseeable.
- The leave is protected, and the employee must be reinstated to the same or equivalent job, subject to some exceptions for employers with fewer than 25 employees.

- Employers have the option to decline to give emergency FMLA leave to health care workers, emergency responders, and others fighting COVID-19.

### **The Emergency Paid Sick Leave Act**

The FFCRA requires up to **80 hours (2 weeks) paid leave** for full-time employees (**pro-rated** for part-time employees).

- There is no length of service requirement for an employee to qualify.
- Employees must be unable to work (or telework) for absences related to coronavirus due to the employee:
  1. being subject to a government order to isolate or quarantine related to COVID-19;
  2. being advised by a health care provider to self-quarantine due to COVID-19;
  3. experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  4. caring for an individual subject to a government order to isolate or quarantine or who has been advised by a health care provider to self-quarantine;
  5. caring for a son or daughter due to school or child care center closings or the unavailability of child care (same qualifying reason as emergency FMLA leave); OR
  6. experiencing any other “substantially similar condition” specified by the Secretary of HHS and DOL.
- There are different pay rates and caps depending on the reasons for leave.
  - For reasons **1-3**, the leave is paid at **100%** of the regular rate of pay for the hours normally scheduled to work (a 6-month average or reasonable expectation of hours for employees with a variable schedule) and capped at \$511 per day and \$5,110 in total;
  - For reasons **4 and 6**, the leave is paid at **2/3** the regular rate of pay and \$200 per day and \$2,000 in total.
  - For reason **5**, the employee also qualifies for emergency FMLA leave. The sick leave is paid at 2/3 the regular rate and capped at \$200 per day and \$2,000 total for the paid sick leave. The next 10 weeks of emergency FMLA leave is also paid at 2/3, with a cap of \$200 per day and \$10,000 total. Thus, the total cap for an employee who qualifies for reason 5 is \$12,000 over the 12-week period.

- Employers cannot require the employee to use other forms of paid time off first.
- The leave does not carry over and is not payable upon termination of employment.
- Employers cannot require employees to find a replacement worker to cover their paid sick leave.
- The DOL has released a model [notice](#) which must be posted in a conspicuous place at work. The DOL suggests the notice can be emailed to employees who are at home or not working at the worksite. There is no requirement to post the notice before the effective date of the FFCRA, but it should be **posted by April 1**.
- Employers cannot discriminate or retaliate against an employee under this act and is subject to the same penalties under the FLSA.
- Employers have the option to decline to give emergency paid sick leave to health care workers, emergency responders, and others fighting COVID-19.

### **Tax Credits Available**

Tax credits are available for emergency FMLA leave and the emergency paid sick leave.

- A 100% refund on payroll tax credit for required paid family leave and required paid sick leave, subject to same caps for payment to the employee.
- A self-employment tax credit will be available for paid sick leave for certain self-employed individuals.
- The refunds will be available in the following quarter of the payroll tax payment.
- The refunds will also cover the cost of the employer contribution for group health insurance coverage for the employee.

The Secretary of Labor is authorized to issue regulations pertaining to the emergency FMLA leave and paid sick leave and (i) to exclude certain health care providers and emergency responders from the definition of eligible employees and (ii) to exempt employers with under 50 employees if it would jeopardize the viability of the business.

For guidance from the DOL see <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>.