Families First Coronavirus Response Act: 
Paid Leave Requirements and Coalition Impact

Employers Health
Agenda

• Families First Coronavirus Response Act
• Paid Leave Requirements
• Key Considerations & Resources
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Families First Coronavirus Response Act
Families First Coronavirus Response Act (FFCRA)

- Signed into law March 18th, 2020.
- One of two acts to address the COVID-19 pandemic (other was the March 27th, Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).
- FFCRA includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.
- Requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.
- Administered by DOL Wage and Hour Division. Temporary rule published April 6, 2020.*
- As written, paid leave provisions will apply from the effective date, April 1, 2020, through December 31, 2020.

https://www.federalregister.gov/d/2020-07237*
Paid Leave Requirements
Covered employers must provide to all employees:

- Two weeks (up to 80 hours) of **paid sick leave** at the employee’s regular rate of pay where the employee is unable to work because the employee is quarantined, and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee’s regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine, or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition.

Covered employers must provide to employees that it has employed for at least 30 days:

- Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee’s regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave
Key Considerations

- Covered Employers
- Qualifying Reasons for Leave
- Duration of Leave
- Enforcement & Refundable Tax Credit
Covered Employers

• Employers with fewer than 500 employees and public agencies.

• Employers with fewer than 50 employees could be exempt under certain limited circumstances if any of the following would occur:*

  (1) Such leave would cause the small employer's expenses and financial obligations to exceed available business revenue and cause the small employer to cease operating at a minimal capacity;

  (2) The absence of the employee or employees requesting such leave would pose a substantial risk to the financial health or operational capacity of the small employer because of their specialized skills, knowledge of the business, or responsibilities; or

  (3) The small employer cannot find enough other workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services the employee or employees requesting leave provide, and these labor or services are needed for the small employer to operate at a minimal capacity.

• In some circumstances, employers with fewer than 25 employees may not be subject to FMLA’s restoration provision.**

* https://www.federalregister.gov/d/2020-07237/p-116
** https://www.federalregister.gov/d/2020-07237/p-150
Qualifying Reasons for Leave

An employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
Duration of Leave

For reasons (1) - (4) and (6): A full-time employee is eligible for two weeks (up to 80 hours) of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.
Calculation of Pay

For leave reasons (1), (2), or (3): employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to $511 per day and $5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to $200 per day and $2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to $200 per day and $12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).
Key Considerations & Resources
Required Notice

- FFCRA requirement that employers post and keep posted a notice of the law’s requirements
  - https://www.dol.gov/agencies/whd/pandemic
- Per temporary rule, an employer may distribute the notice to employees by email, or post the required notice electronically on an employee information website to satisfy the FFCRA requirement.
Health Care Coverage on Paid Leave

- Employee who takes expanded family and medical leave or paid sick leave is entitled to continued coverage under the employer's group health plan on the same terms as if the employee did not take leave.
- Includes
  - Medical, prescription, dental, vision, and other benefit coverage.
  - Also applies to benefits provided through a supplement to a group health plan, whether or not the supplement is provided through a flexible spending account or other component of a cafeteria plan.
- Employee premium contribution still permitted.
Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

Employers in violation of first two weeks’ paid leave or sick time subject to penalties and enforcement in the Fair Labor Standards Act (FLSA).

Employers in violation providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act (FMLA).

30 day period of non-enforcement for first 30 days after the Act takes effect.
Refundable Tax Credit

• Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA.

• Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps.

• Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.

• Administered by Department of Treasury.

• Two methods to credit employers.
  • Deduct against employment taxes or file Form 7200.
Form 7200

- IRS Forms and Instructions Available.

- IRS FAQs.
Possible Challenges and Compliance Issues

- Interplay with current PTO and vacation time & polices.
- Termination of an employee while FFCRA is in effect.
- Calculation of part-time hours worked.
- Intermittent leave while teleworking.
- Additional detail needed by employers seeking an exemption.
- Employee has already taken FMLA leave earlier in the year.
- Employee seeking multiple leave periods.

Resource for employer or employee questions: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions
Appendix: Flow Chart
Step 1. Are you a public employer or a private employer with fewer than 500 employees?

- **No**
  - The FFCRA does not apply to your organization.

- **Yes**
  - Proceed to Step 2.
Step 2. Does the employee need leave to care for:

- Employee’s minor child?
  - Move to step 3

- The Employee?
  - Skip to step 5

- Another Individual?
  - Skip to step 6
Step 3. If the leave has been requested because the employee’s child care arrangements have been impacted by the COVID-19 emergency, proceed to Step 4.

If the leave has been requested because the employee’s minor child is in quarantine or isolation due to the COVID-19 or because the minor child has been advised by a medical provider to self-quarantine, skip to Step 6.
Step 4. Does the employee have a “qualifying need for leave?”

A. Must the employee care for his or her minor son or daughter because the child’s school or place of care has been closed due to a public health emergency, or because the child’s care provider is unavailable due to a public health emergency?

B. Is the employee unable to work or telework because of the need for care?

If the answer to ONE OR BOTH questions is “NO,” stop here. The employee is not eligible for either type of leave under the FFCRA.

If the answer to BOTH questions is “YES,” then that employee is entitled to emergency paid sick leave and may be entitled to up to twelve (12) weeks of FMLA with the first two (2) weeks being unpaid and the remaining ten (10) weeks paid at 2/3 of the employee’s pay rate or up to $200 per day, whichever is lesser. Evaluate additional paid sick time. Move to step 6.
Step 5. Is the employee unable to work or telework for one of the reasons listed below?

A. The employee is subject to federal, state or local quarantine or isolation because of COVID-19.

B. The employee has been advised by a health-care provider to self-quarantine because of COVID-19.

C. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

If “NO,” stop here. The employee is not entitled to emergency paid sick leave.

If “YES,” the employee is entitled to emergency paid sick leave, as follows:

Full-time employees are entitled to a maximum of 80 hours of paid sick leave under the FFCRA. You are required to provide paid sick time at the employee’s full regular rate of pay, subject to a cap of $511 per day and $5,110 in the aggregate.

Part-time employees are entitled to a maximum paid leave of the hours equal to the number of hours that employee works, on average, over a two week period. You are required to provide paid sick time at the employee’s full regular rate of pay, subject to a cap of $511 per day and $5,100 in the aggregate.
Step 6. Is the employee unable to work or telework for one of the reasons listed below?

A. The employee is caring for an individual who is subject to federal, state or local quarantine or isolation because of the COVID-19.

B. The employee is caring for his/her child if the school or place of care is closed or the child care provider is not available due to COVID-19 precautions.

C. The employee is experiencing any other substantially similar conditions specified by the Sec. of HHS in consultation with the Sec. of Labor and Treasury.

If “NO,” stop here. The employee is not entitled to emergency paid sick leave.

If “YES,” the employee is entitled to emergency paid sick leave, as follows:

Full-time employees are entitled to a maximum of 80 hours of paid sick leave under the FFCRA. You are required to pay emergency sick time at the rate of 2/3rds the employee’s regular rate of pay, subject to a cap of $200 per day and $2000 in the aggregate.

Part-time employees are entitled to a maximum paid leave of the hours equal to the number of hours that employee works, on average, over a two week period. You are required to pay emergency sick time at the rate of 2/3rds the employee’s regular rate of pay, subject to a cap of $200 per day and $2000 in the aggregate.
Questions?