

Families First Coronavirus Response Act:

Paid Leave Requirements and Coalition Impact



Agenda

- Families First Coronavirus Response Act
- Paid Leave Requirements
- Key Considerations & Resources
- Appendix: Flow Chart



Families First Coronavirus Response Act



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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



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Paid Leave Requirements – Effective April 1, 2020

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>



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Key Considerations

Covered
Employers

Qualifying
Reasons for
Leave

Duration of
Leave

Enforcement &
Refundable Tax
Credit



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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



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Required Notice

- FFCRA requirement that employers post and keep posted a notice of the law's requirements
 - <https://www.dol.gov/agencies/whd/pandemic>
 - https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- 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.

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;
- ⅔ 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 ⅓ 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:

- | | |
|---|---|
| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; | 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 |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19; | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
| 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); | |

► 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



WH1422 REV 03/20



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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.



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Enforcement

- 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.
 - <https://www.irs.gov/forms-pubs/about-form-7200>
- IRS FAQs.
 - <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

Form 7200 (March 2020) Department of the Treasury Internal Revenue Service		Advance Payment of Employer Credits Due to COVID-19 ▶ Go to www.irs.gov/Form7200 for instructions and the latest information.		OMB No. 1545-0029
Name (not your trade name)			Employer identification number (EIN)	
Trade name (if any)			Applicable calendar quarter (check one)	
Number, street, and apt. or suite no. If a P.O. box, see instructions.			(2) <input type="checkbox"/> April, May, June (3) <input type="checkbox"/> July, August, September (4) <input type="checkbox"/> October, November, December	
City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)				
Foreign country name		Foreign province/county		Foreign postal code
Does a third-party payer file your employment tax return? (See instructions.) If "Yes," enter its name.				Third-party payer's EIN (if applicable)
Tip: File Form 7200 if you can't reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don't reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return. You can't request an advance payment of the credit for sick and family leave for self-employed individuals.				
Part I Tell Us About Your Employment Tax Return				
A Check the box to indicate which employment tax return form you file (or will file for 2020): (1) <input type="checkbox"/> 941, 941-PR, or 941-SS (2) <input type="checkbox"/> 943 or 943-PR (3) <input type="checkbox"/> 944 or 944(SP) (4) <input type="checkbox"/> CT-1				
B Is this a new business started on or after January 1, 2020? ▶ <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," skip line C unless you've already filed Form 941, Form 941-PR, or Form 941-SS for at least one quarter of 2020.				
C Amount reported on line 2 of your most recently filed Form 941 (or wages reported on Schedule R (Form 941), column (c), by your third-party payer (see instructions)). If you file a different employment tax return, see instructions ▶				
D Enter the total number of employees you have. See instructions ▶				
Part II Enter Your Credits and Advance Requested				
1 Total employee retention credit for the quarter. See instructions			1	
2 Total qualified sick leave wages eligible for the credit and paid this quarter. See instructions . . .			2	
3 Total qualified family leave wages eligible for the credit and paid this quarter. See instructions . . .			3	
4 Add lines 1, 2, and 3			4	
5 Total amount by which you have already reduced your federal employment tax deposits for these credits for this quarter			5	
6 Total advanced credits requested on previous filings of this form for this quarter			6	
7 Add lines 5 and 6			7	
8 Advance requested. Subtract line 7 from line 4. If zero or less, don't file this form			8	



Possible Challenges and Compliance Issues

- Interplay with current PTO and vacation time & policies.
- 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>



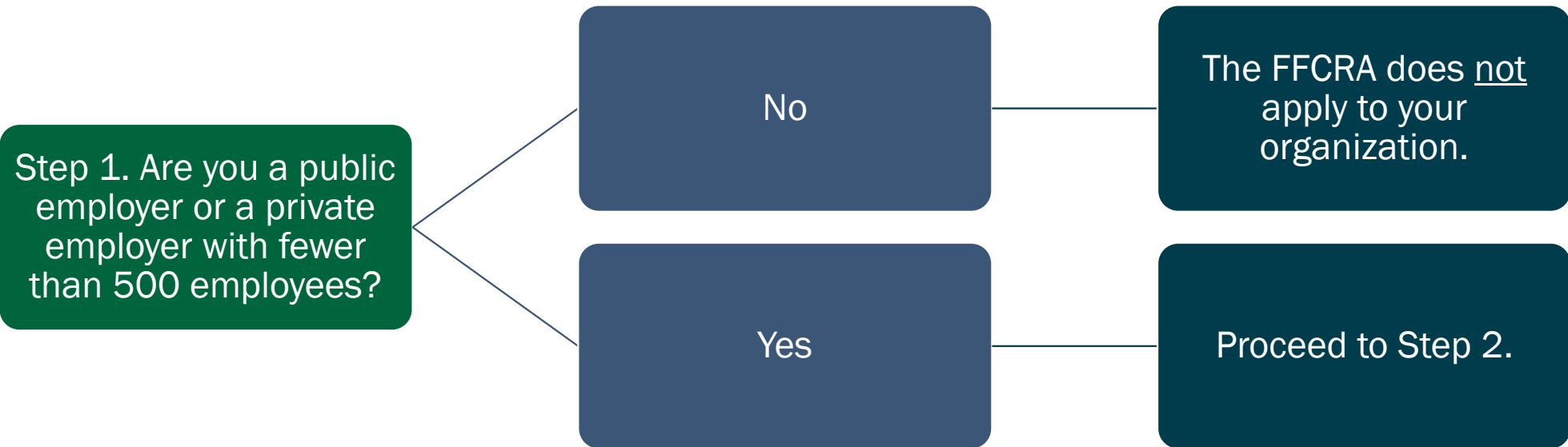
Appendix: Flow Chart

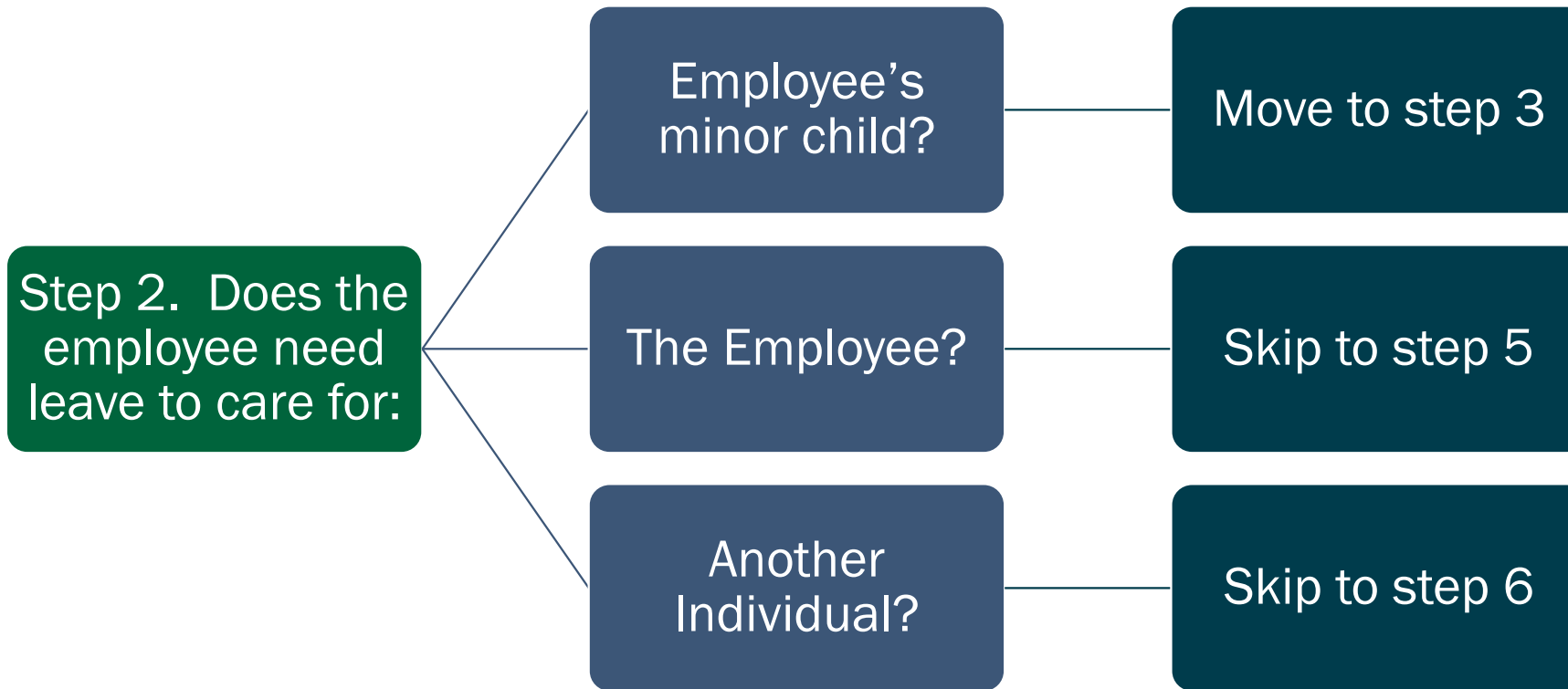


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Step 3. If the leave has been requested because the employee's child care arrangements have been impacted by the COVID-19 emergency, proceed to Step 4.

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 \$5110 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?



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