



Families First CoronaVirus Response Act

In response to the novel coronavirus (COVID-19) outbreak, the House and Senate have passed the Families First Coronavirus Response Act (FFCRA), and President Trump has signed it into law. **The following is intended to provide you with a clear picture of the new law and its impact on your business without wading through the minutiae of the act itself. As always, we are available to address any questions you may have.**

Overview

The intent of the new law is to provide emergency paid sick leave and paid family and medical leave in response to COVID-19. Because this creates a burden for small businesses, the FFCRA also provides exemptions and tax credits for those who qualify. In addition, the law provides additional funding for food assistance and unemployment programs and addresses insurance coverage for COVID-19 testing. The focus of this notice is on the employment related provisions and their impact on employers.

Timing

The FFCRA was signed into law on March 18, 2020 and benefits must begin within 15 days (April 2, 2020). Benefits under the FFCRA will expire on December 31, 2020.

Emergency Paid Leave

The FFCRA creates “emergency paid leave” for employees unable to work because COVID-19 has affected them in one of the specified ways outlined below. If an employee qualifies, they may take up to two work weeks (10 work days) off and still be paid.

Qualifying Events

Employees will qualify for emergency paid leave if:

1. They are subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. They are quarantined at the direction of a health authority or healthcare provider to prevent the spread of COVID-19.
3. They are experiencing symptoms of COVID-19 and are seeking a diagnosis.
4. They are caring for another person who is subject to a federal, state, or local quarantine or isolation order related to COVID-19, or quarantined at the direction of a health authority or healthcare provider to prevent the spread of COVID-19.
5. They are caring for a child or another person due to the closure of a school or other care facility due to COVID-19.
6. They are experiencing similarly conditions that have been specified by the US Department of Health and Human Services (HHS).

Duration

Full time employees are eligible for 80 hours of leave. Part time employees are eligible for leave equal to the average number of hours worked in a two-week period.

Pay Rate

The rate of pay depends upon the qualifying event (see above). For qualifying events 1 through 3, the maximum available benefit is \$511/day with a hard cap of \$5,110. The employee qualifies for the greatest of the following, up to the maximum:

- The employee's regular rate;
- FLSA minimum wage; or
- State or locality's minimum wage.

For qualifying events 4 through 6, the maximum available benefit is \$200/day with a hard cap of \$2000.

The employee qualifies for 2/3 of their regular rate, FLSA minimum wage, or state/locality minimum wage, up to the maximum.

Conditions

Both employers and employees are subject to certain conditions, as follows:

1. Employees
 1. Emergency paid leave does not carry over from one year to the next.

2. Emergency paid leave ends as soon as the employee's next scheduled shift starts after they no longer qualify for paid time.
 3. Employees do not have to find someone to cover for them.
 4. Employees can use emergency paid leave before taking regular accrued sick time or PTO, if any applies.
 5. Emergency paid leave does not reduce accrued leave the employee already has available.
2. Employers
1. FFCRA information must be posted in a conspicuous place similar to other employment related regulations. The US Department of Labor will provide an example.
 2. Employer cannot take any adverse employment action against an employee for using emergency paid leave.
 3. Employers subject to bargaining agreements must contribute expected amounts to a fund for distribution by the union to members as requested.

Exceptions

Healthcare workers and emergency responders can be excluded.

Employers with fewer than 50 employees may be exempt with permission from the US Secretary of Labor.

FMLA Paid Leave

The FMLA protects workers based upon certain medical or family situations. The FFCRA amends the FMLA to include 12 weeks of leave and protections for job loss for public health emergencies when an employee is unable to work or telework due to a school or child care facility closure, or if the individual is unavailable as a result of COVID 19 precautions. The first two weeks of leave are unpaid under the FMLA amendment, but likely covered under the emergency paid leave discussed above, and the last ten weeks are paid leave as outlined below.

Benefits

Paid FMLA leave is different from emergency paid leave discussed above. The specifics are as follows:

Employees are eligible for 2/3 their regular pay based on the hours they would normally work.

Benefits are capped at \$200/day or an aggregate of \$10,000 and 50 days.

Variable-hour employees are eligible based upon average hours worked for the six months immediately prior to the start of leave, or the amount anticipated when they were hired if they have not worked the last six months.

Eligibility

Employee must have been employed for at least 30 days and is unable to work because of the need to care for a child under the age of 18 whose school or place of care has been closed or is unavailable due to a COVID-19 public health emergency.

Applicable Employers

The FFCRA amendments of the FMLA apply to employers with fewer than 500 employees.

Conditions

As with emergency paid leave, both employers and employees are subject to certain conditions, as follows:

1. Employees
 1. Employee may elect to use the other accrued paid sick leave or PTO during the first 10 days of leave.
 2. Employee must provide notice to employer of the need for leave as soon as practicable and the employer may require documentation of the need.
2. Employers
 1. As with all FMLA leave, the general requirement is that the employer must restore the employee to their position after leave has ended.
 2. Employer does not have to pay an employee for the first 10 days of FMLA leave, but must pay for every day of leave after the first 10 days have passed. (Also note that even though the employer needn't pay under the FMLA, the employee is most likely eligible for emergency paid leave for those 10 days under the FFCRA).
 3. Employers of unions must contribute to a fund that will be distributed by the union to its members based upon hours worked.

Exceptions

Healthcare workers and emergency responders are not eligible.

Employers with less than 50 employees may be exempt if the US Secretary of Labor determines that the amendments will jeopardize the business's viability as a going concern.

Employers with less than 25 employees are exempt from restoring employees to their positions after leave if the following conditions are met:

- The position no longer exists due to economic conditions caused by the public health emergency;
- The employer makes reasonable efforts to restore the employee to a similar position with equivalent compensation and benefits; and
- If the above fails, the employer makes reasonable efforts in the year following the end of leave to let the employee know when an equivalent position exists again.

Hypotheticals – What it means for Employers.

Scenario 1 – Employee is ordered by his/her doctor to self-quarantine.

You will be required to pay the employee at their regular rate of pay up to a maximum of \$511/day, with a hard cap of \$5,110, for 10 working days over a two-week period under the paid emergency leave provisions of the FFCRA.

Scenario 2 – Employee takes leave to care for a child who is home for a school closure.

You will be required to pay the employee 2/3 their regular rate up to a max of \$200/day, with a hard cap of \$2,000, for 10 working days over a two-week period under the paid emergency leave provisions of the FFCRA.

If the closure exceeds two weeks and the employee seeks FMLA leave, you will also be required to pay the employee 2/3 their regular rate up to a max of \$200/day, with a hard cap of \$10,000 under the FFCRA's amendment of the FMLA.

Employer Tax Credits

Employers can qualify for tax credits to offset the cost of both emergency paid leave and paid leave under the FMLA. The credits are not available, however, for employers receiving a credit created for paid family and medical leave under the Tax Cut and Jobs Act.

FMLA Paid Leave Tax Credit

Leave paid under the FMLA can be 100% covered by way of a tax credit on an employer's share of Social Security taxes on a quarterly basis. The amount per paid day cannot exceed \$200 with a \$10,000 maximum credit for the year.

Credit cannot exceed the employer's share of Social Security taxes in the quarter, but any excess credit can be used as an overpayment against future tax.

Emergency Paid Leave Tax Credit

Employers can have 100% of emergency paid leave covered by payroll tax credits on a quarterly basis, but only for a maximum of 10 days per employee receiving emergency paid leave.

As with the FMLA paid leave, the credit cannot exceed the employer's share of Social Security taxes in the quarter, but the excess can be applied in a future period.

Coverage for COVID-19 Testing

Though not directly related to your obligations as an employer, in addition to the foregoing, the FFCRA requires that all health insurance plans, including federally funded programs, provide FDA approved testing and any related office, urgent, ER, or telehealth visits related to a COVID-19 diagnosis free of charge. That means no premiums, no co-pays, no deductibles, etc.