

The Families First Coronavirus Relief Act (FFCRA) General Questions

Q: Is there any federal legislation addressing COVID-19 that impacts my operations as employer?

A: Yes. The Families First Coronavirus Relief Act (FFCRA) was enacted on March 18, 2020.

Q: What does FFCRA cover in general?

A: FFCRA guarantees free coronavirus testing, establishes paid family and medical leave and corresponding tax credits, enhances Unemployment Insurance, expands food security initiatives, and increases federal Medicaid funding. It is divided into the following sections:

- A. Appropriations,
- B. Nutrition Waivers, to allow students who receive free or reduced priced meals through schools to continue to receive them
- C. Emergency Family and Medical Leave Act Expansion**
- D. Emergency Unemployment Insurance Stabilization and Access Act of 2020
- E. Emergency Paid Sick Leave Act**
- F. Health Provisions, to help expand COVID-19 diagnostic testing and required tests to be performed at no cost to consumers
- G. Tax Credits for Paid Sick and Paid Family and Medical Leave**

This FAQ document addresses Sections C, E and G.

Q: When does FFCRA take effect?

A: The bill will take effect within 15 days of enactment, i.e., by April 2, 2020.

Q: Which employers are impacted by FFCRA?

A: The paid sick and paid family leave components impact employers with fewer than 500 employees. The bill authorizes the Secretary of the Department of Labor to issue regulations to (1) exclude certain healthcare providers and emergency responders from the definition of eligible employee and (2) exempt small businesses with fewer than 50 employees when it would jeopardize the viability of the business as a going concern.

Q: How will FFCRA impact my workforce?

A: Most, but not all, of the provisions of the FFCRA will impact employers with fewer than 500 employees. These employers will be required to provide a certain amount of paid sick and paid family leave to employees affected by COVID-19, and will receive corresponding employment tax credits. In addition, the FFCRA temporarily expands the reasons for which employees working for enterprises with fewer than 500 employees may take leave under the Family and Medical Leave Act (FMLA).

Emergency Family and Medical Leave Expansion Act (Emergency FMLA Act)

Q: Which employers are covered by the FFCRA Emergency FMLA Act?

A: Employers with 500 or fewer employees, except that businesses with under 50 employees may claim exemption from leave requirements if it would jeopardize the business. It is unclear at this time how employers would demonstrate an exemption should apply and we anticipate any future regulations would address this issue.

Q: Which employees are eligible to take leave under the FFCRA Emergency FMLA Act?

A: Employees who have been employed for at least 30 calendar days are eligible, except the Secretary of Labor may exclude health care providers and emergency responders from being considered eligible employees. We anticipate that future regulation may further define which employees are considered healthcare providers and emergency responders.

Q: How much leave are eligible employees entitled to take?

A: Eligible employees are entitled to take up to 12 weeks of job protected leave.

Q: Are employees entitled to an additional 12 weeks of leave under the FFCRA Emergency FMLA Act, or is the total leave for all FMLA reasons limited to 12 weeks?

A: Total leave under the FMLA, including leave under the FFCRA and for previously existing FMLA-qualifying situations, is limited to 12 weeks.

Q: Are there any exceptions to the requirement that the leave be job-protected?

A: Employers with fewer than 25 employees are not required to provide job-protected leave for an employee taking leave if the employee's position no longer exists following leave due to operational changes occasioned by a public health emergency provided that: (1) the employer makes reasonable efforts to restore the employee to an equivalent position; and (2) the employer makes reasonable attempts to contact the employee for a period of one-year following a certain period if an equivalent position becomes available.

Q: What are the reasons an employee can take leave?

A: Eligible employees can take leave for "a qualifying need related to a public health emergency." A qualifying need related to a public health emergency for purposes of FFCRA Emergency FMLA Act is limited to when an employee is unable to work (or telework) due to a need to care for a son or daughter under the age of 18 if the child's school or place of care has closed OR the child care provider of such child is unavailable due to the public health emergency.

Q: Must leave under this provision be paid?

A: The first 10 days of the leave can be unpaid. An employee may elect – but cannot be required – to use accrued vacation, personal or medical or sick leave for those days. The remainder of the leave must be paid at two-thirds the employee’s regular rate of pay, for the number of hours the employee would otherwise be scheduled to work. For employees who have weekly working hours that fluctuate, the employer is allowed to take an average over a six-month period. If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work controls. Paid leave is subject to a limit of \$200 per day, and up to a total amount of \$10,000.

Q: Can I take a credit for the amount I pay my employees in paid leave?

A: Yes. See Section Tax Credits for Paid Sick and Paid Family and Medical Leave below.

Q: For how long is the FFCRA Emergency FMLA Act in effect?

A: The FFCRA Emergency FMLA Act will sunset effective December 31, 2020.

Emergency Paid Sick Leave Act

Q: Which employers are covered by the FFCRA Emergency Paid Sick Leave Act?

A: Employers with 500 or fewer employees, except that businesses with under 50 employees may claim exemption from leave requirements if it would jeopardize the business. It is unclear at this time how employers would demonstrate an exemption should apply and we anticipate any future regulations would address this issue.

Q: Which employees are eligible to take leave under the FFCRA Emergency Paid Sick Leave Act?

A: All employees are eligible to take paid sick leave under the FFCRA regardless of how long they have been employed by the employer.

Q: How much leave are eligible employees entitled to take?

A: Full-time employees are entitled to take up to 80 hours paid sick leave. Part-time employees are eligible for a number of hours equal to the average hours worked over a two-week period.

Q: For what reasons are employees entitled to take paid sick leave?

A: Employees who are unable to work or telework due to any one or more of the following conditions:

1. They are subject to a Federal, State, or local quarantine or isolation order (“isolation order”) related to COVID-19;
2. They have been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (“quarantined employee”);
3. They are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. They are caring for an individual who is subject to an isolation order or is a quarantined employee;
5. They are caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
6. They are experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services.

Q: How much are eligible employees entitled to be paid?

A: Paid sick leave will be based on employees' regular compensation, but is capped at a maximum 100% of wages up to \$511 per day (and a total of \$5,110) for employees in categories 1-3 above, and two-thirds of wages up to \$200 per day (and a total of \$2,000) for employees in categories 4-6 above.

Q: What impact does this have on my existing sick leave policy?

A: This paid sick leave is in addition to any existing sick leave provided by the employer (including subject to state or local requirements). An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under the Act. Nothing expressly prohibits employers from changing their leave programs after the law is enacted, however the employee relations impact of doing so should be carefully considered.

Q: Is there a required poster or notice to employees?

A: Employers will be required to post an approved notice once the DOL makes it available.

Tax Credits for Paid Sick and Paid Family and Medical Leave

Paid Sick Leave Tax Credits

Q: Will I be entitled to take a credit for the amounts that I pay in paid sick leave under FFCRA?

A: Yes. All employers, except for government employers, required to pay paid sick leave under the FFCRA will be entitled to take a tax credit for the amount paid. These non-government employers will be entitled to a refundable federal employment tax credit for the entire amount that they pay in paid sick leave.

Q: Are government employers eligible for a tax credit for paid sick leave?

A: No. The credit does not apply to the government of the United States, the government of any State or political subdivision or any agency or instrumentality of such government.

Q: Are there limits to the tax credit I can receive for paid sick leave?

A: Yes. Credits may not exceed amounts paid for emergency paid sick leave up to the amounts described above. Because the credit is fully refundable, employers will receive reimbursement of the amount paid, subject to the caps, even if their tax liability is less than the amount paid out in emergency paid sick leave.

Q: Am I entitled to a credit if I keep paying for my employees to have health insurance while they are out on leave?

A: If you continue an employee's health plan coverage while the employee is on paid emergency sick leave under FFCRA, the credit is increased up to an amount which includes the employer's expense for the health plan coverage.

Q: Do I still need to pay federal employment taxes on amounts paid to employees as emergency paid sick leave under FFCRA?

A: No. Emergency paid sick leave mandated by FFCRA is exempt from Social Security taxes otherwise imposed on the employer.

Paid Family Leave Tax Credits

Q: Will I be entitled to take a credit for the amounts that I pay in paid family leave under FFCRA?



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A: Yes, all employers except for government employers, are entitled to a refundable federal employment tax credit for the entire amount that they pay to eligible employees. Because the credit is fully refundable, employers will receive full reimbursement of the amount paid regardless of their actual tax liability.

Q: Are government employers eligible for a tax credit for paid family leave?

A: No. The credit does not apply to the government of the United States, the government of any State or political subdivision or any agency or instrumentality of such government.

Q: Are there limits to the tax credit I can receive for paid family leave?

A: Yes. Credits may not exceed amounts paid for an individual with respect to family medical leave, i.e., \$200 per day, and an aggregate of \$10,000 with respect to all calendar quarters.

Q: Am I entitled to a credit if I keep paying for my employees to have health plan coverage while they are out on family leave?

A: If you continue an employee's health plan coverage while the employee is on paid family leave, the credit is increased by an amount equal to your expense for providing such coverage.

Q: Do I still need to pay federal employment taxes on amounts paid to employees as family leave under FFCRA?

A: Paid family leave mandated by FFCRA for paid family leave are exempt from Social Security taxes otherwise imposed on the employer.

Q: For how long will the credits under FFCRA be in place?

A: Like the paid sick and paid family leave provisions, the tax credits created by FFCRA will sunset effective December 31, 2020.