

IMPORTANT COVID-19 UPDATE

GUIDANCE ON THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

The Families First Coronavirus Response Act (FFCRA), which passed last week, requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. Since its passage, there have been many questions as to various interpretative issues related to the law. Thankfully, the Department of Labor's Wage and Hour Division that administers and enforces the new law's paid leave requirements has issued a definitive set of guidelines. These provisions will apply from the effective date of the law through December 31, 2020. A summary of the definitive clarification is below:

Generally, the FFCRA provides that employees of covered employers are eligible for:

- *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 (pursuant to Federal, State, or local government order or advice of a health care provider), 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 (pursuant to Federal, State, or local government order or advice of a health care provider), or to 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 as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and

- *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, who has been employed for at least 30 calendar days, 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.*

Covered Employers

The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees. Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision. Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business.

Eligible Employees

All employees of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19. Employees employed for at least 30 days are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19. Where leave is foreseeable, an employee should provide as much notice as possible to the employer. After the first workday of paid sick time, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid sick time.

Qualifying Reasons for Leave

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) for reasons related to COVID-19 because the employee:

1. Is subject to a federal, state, or local quarantine or isolation order;
2. Has been advised by a health care provider to self-quarantine;
3. Is experiencing 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); 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.

Under the FFCRA, an employee qualifies for expanded family leave if the employee 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.

Duration of Leave

For reasons (1) through (4) and (6) as outlined above, a full-time employee is eligible for 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) as outlined above, a full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to ten weeks of paid expanded family & medical 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

Note the following scenarios:

- For leave reasons (1), (2), or (3) as outlined above, employees taking leave are entitled to pay 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) as outlined above, employees taking leave are entitled to pay 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) as outlined above, employees taking leave are entitled to pay 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).

Links to the Exact Regulatory Guidance

- **Families First Coronavirus Response Act: Questions and Answers**
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- **Families First Coronavirus Response Act: Employee Paid Leave Rights**
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
- **Families First Coronavirus Response Act: Employer Expanded Family and Medical Leave Requirements**
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

As more discernable information becomes available we will circulate it immediately.

Source: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

