

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

## EMERGENCY PAID FAMILY MEDICAL LEAVE

## EMERGENCY PAID SICK LEAVE

### LEAVE OVERVIEW

The Act amends the FMLA to allow certain employees of employers with fewer than 500 employees and government employers to take 12 weeks of job-protected leave for a “qualifying need related to a public health emergency.” A “public health emergency” is defined to mean “an emergency with respect to COVID-19 declared by a Federal, State, or local authority.”

Employers are required to provide 80 hours of fully paid sick leave to full-time employees (pro-rata rules for part-time employees\*) on top of any other existing paid leave program of the employer.

\*For part-time employees: the average number of hours they work in a 2-week period

### EFFECTIVE PERIOD

April 2, 2020 - December 31, 2020

### LEAVE BENEFITS

Employers must pay ten remaining weeks of leave at a rate not less than two-thirds of employee’s regular rate, not to exceed \$200 per day and \$10,000 in the aggregate.

Employers would be required to pay employees their full wages, not to exceed \$511 per day and \$5,110 in the aggregate, **for a use described in (1), (2), or (3) below.**

Employers would be required to pay employees two-thirds of their wages, not to exceed \$200 per day and \$2,000 in the aggregate, **for a use described in (4), (5), or (6) below.**

### COVERED EMPLOYERS

Private employers with 500 or fewer employees. *See exemptions below.*

### EXEMPTIONS

Secretary of Labor has authority to issue regulations to:

- 1) Exclude certain health care providers and emergency responders from the definition of eligible employee; and
- 2) Exempt small businesses with fewer than 50 employees if the above requirements would jeopardize the viability of the business going forward. See Department FFCRA regulations (expected April 2020).

### ELIGIBILITY REQUIREMENTS

Employee has been employed for 30 or more calendar days by the employer

All employees are eligible

## LEAVE QUALIFIERS

Employees who are unable to work (or telework) because the employee is caring for their child (18 years or younger) due to school or childcare provider is closed or unavailable due to a public health emergency

- 1) Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2) Employee has been advised by health care provider to self-quarantine due to coronavirus;
- 3) Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4) Employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 5) 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; or
- 6) Employee is experiencing any other substantially-similar condition specified by the Secretary of HHS, in consultation with the Secretaries of Labor and Treasury.

## PAID TIME OFF USAGE

Employers are not required to pay initial ten days of leave; however, employees may substitute accrued vacation, personal or sick leave to cover unpaid leave portion. *Employers cannot force substitution of PTO.*

Employees may use accrued vacation, personal or sick leave in addition to this paid sick leave provision.

## VARIABLE OR PART-TIME SCHEDULE CALCULATION

In the case of an employee whose schedule varies from week to week to such an extent an employer is unable to determine with certainty the number of hours the employee would have worked if such an employee had not taken the leave, the employer shall use the following in place of that number:

- 1) A number equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date which the employee takes the leave, including hours for which the employee took leave of any type. *For questions on tipped employees, please call us for more details.*
- 2) 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.

## RETURN TO WORK

Employers with 25 or fewer employees are not required to restore an employee once leave has been exhausted if the position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer caused by a public health emergency.

The employer may request a return to work certification if the leave is related to COVID-19 health concerns.

## OTHER KEY PROVISIONS

### INTERACTION WITH OTHER PTO

The emergency paid family and sick leave benefits can be used in addition to any other PTO provided by the employer, but the employer cannot require employees to exhaust other PTO before taking the emergency paid leave. **Employees may use the emergency paid leave first if they choose to do so and then supplement it with other PTO to reach their full wage rate.**

### EMERGENCY PAID LEAVE CARRYOVER

Emergency Paid Sick time provided under this Act does not carryover from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.

### EMPLOYER NOTICE

Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements. The Department will issue a model notice no later than March 25, 2020.

### PROHIBITIONS

Employers are may not discharge, discipline, retaliate, or otherwise discriminate against any employee who takes leave in accordance with the act. Employers that fail to pay required sick leave will be treated as a failure to pay minimum wages in violation of the Fair Labor Standards Act.

### PENALTIES & ENFORCEMENT

Employers in violation of the first two weeks' expanded family and medical leave or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the provisions providing for up to an additional 10 weeks of expanded family and medical 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. The Department will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.

**DISCLAIMER: Please note that this is not all-inclusive. Our guidance is designed only to give general information on the issues covered. It is not intended to be a comprehensive summary of all laws which may apply to your situation, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion. Consult your legal advisor regarding the specific application of the information to your plan.**