



FREQUENTLY ASKED QUESTIONS

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

(“FFCRA”, formally called H.R. 6201)

EMERGENCY SICK LEAVE

The below questions and answers provided by HR Service, Inc. are not to be viewed as legal advice. You are advised to seek advice from your attorney. Answers to the below questions were provided prior to the release of the final regulations that are forthcoming, which may impact this information.

1. When do these new laws go into effect?

The effective dates of the FFCRA are April 01, 2020, until December 31, 2020. They may not be applied retroactively.

2. Who is covered by this?

The FFCRA applies to all companies with fewer than 500 employees, including part-time headcount as well as employees on leave and temporary employees. Employers with fewer than 50 employees will be able to apply for a hardship exemption if they can show that the paid sick leave would jeopardize their business. The process to request such an exemption was not clarified in the language of the Act, but will be addressed in forthcoming regulations.

3. How should I notify my employees of these new laws?

The US Department of Labor will be preparing Notices to be posted in all workplaces. These are expected to be available by March 26, 2020.

4. Can you give me a summary of the new laws please?

There are two parts to the FFCRA. The first part expands FMLA to provide leave time for employees who need to care for children under age 18 who are unable to attend school or whose daycare provider is unavailable. The second part provides for Emergency Sick Pay of up to 80 hours for the employee’s own COVID-19 illness, quarantine, or isolation order; to care for a person who has COVID-19 or is subject to quarantine or isolation order; or to care for a son or daughter who school or day care has been closed or who child care provider is unavailable.



First, the FFCRA makes a temporary modification through the end of 2020 to the Family and Medical Leave Act of 1993. This modification is formally titled the “Emergency Family and Medical Leave Expansion Act”. The FFCRA gives employees the right to take up to 12 weeks of COVID-19 leave from their workplaces if “the employee is unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.” (NOTE: in this context, “public health emergency” means “an emergency with respect to COVID-19 declared by a Federal, State, or local authority.”)

Employees with at least 30-days’ service with the employer are eligible to take leave under FFCRA. The first 10-days are unpaid; then, the employee is entitled to receive 2/3 pay for the remaining 50 days, with a cap of \$200 per day and \$10,000 aggregate. The employee may opt to use previously-accrued PTO, vacation, or sick pay as available to receive pay for the first 10 days at their discretion, or they can use Emergency Paid Sick Leave described below.

The second part of FFCRA is the creation of an Emergency Paid Sick Leave. The amounts of Emergency Sick Pay vary based on the status of the employee: 80 hours of pay for full time employees and a pro-rated portion of that for part-time workers based on their average number of hours over a typical two-week period.

Employees who are sick themselves and / or are quarantined are to be paid 100% of wages for up to 10 days, capped at \$511 per day and \$5110 total for all 10 days. Employees who are caring for another qualified person are eligible for 2/3 pay, capped at \$200/day and \$2000 total for all 10 days.

5. We have people out due to no childcare. Are they covered under this new bill?

Yes, leave to care for a child whose school has closed, or childcare provider is unavailable due to the coronavirus is an eligible reason for employees to use the paid COVID-19 leave mandated under the FFCRA. This applies to companies with fewer than 500 employees.

6. We have people calling in sick, due to what they think maybe contagious, and/or showing symptoms. Are they covered under the bill?



Yes, they qualify if they are experiencing symptoms and are seeking medical diagnosis.

7. We are considering closing down next week, as our manufacturing has to be done here at the plant. Are all employees and companies covered under the bill?

The bill covers employers with fewer than 500 or less employees. Unlike with the Emergency Family and Medical Leave, which requires 30 days of employment, the Emergency Paid Sick leave will be available to all employees immediately (effective April 1, 2020).

8. Are employees who are out on furlough covered by this law and entitled to paid leave for the Sick and FMLA expansion Acts?

There is a compelling argument that inactive employees are not entitled to paid leave given that under both laws, an employee is eligible for paid leave only if they are unable to work "due to" a COVID-19 qualifying reason. An inactive employee cannot make this showing; they are unable to work because their employer placed them on inactive status, not because of COVID-19.

9. Does the emergency paid sick leave only apply to full time employees? What about contract employees that are staffed by a staffing agency?

The emergency paid leave applies to full-time and part-time employees. While co-employment, contractors and other similar scenarios are not addressed by the Act, the employees in the scenario of this question would be eligible for emergency paid leave from the staffing agency, their employer.

10. The document states that future regulations may exempt small businesses with fewer than 50 employees from the paid sick leave requirement. When will that be determined?

The current Act states that small businesses with fewer than 50 employees can apply for an exemption to be determined by the Secretary of Labor. As of this writing, the precise method for doing this has not been established by US Department of Labor. Clarification is expected prior to the April 1 effective date.



11. Our current PTO policy is set to accrue 3 sick days per year and 2 personal days per year, total of 5 days per year. Do we need to add two weeks of paid sick leave in additional to our accrual policy? Or do our accrual rates count towards the two weeks?

Under the FFCRA, employers are required to provide an additional two weeks of Emergency Sick Pay to all employees for COVID-19 related reasons. This additional Emergency Sick Pay time is over and above normal non-COVID situations, **and may not** be used for reasons unrelated to the COVID-19 outbreak. The costs associated with the Emergency Sick Pay may be recovered through the Tax Credit portion of FFCRA.

12. What if our hourly staff are not working ANY hours due to office closures and are filing for unemployment? Can we even keep them on insurance? Can we as an Employer continue to pay the EE portion of the health insurance premiums?

If the employee is on furlough or working reduced hours, they are eligible to file for unemployment. Their medical insurance can remain intact provided that the policy and provider allow for employees not actively at work to retain coverage. If allowed, the employer can continue to have the employee pay their portion of the insurance premium by sending in a check for the employee portion on a monthly basis. Or the employer can cover the employer and employee cost and reconcile the difference from future wages once the employee returns back to work. It is recommended to discuss extending medical insurance with your insurance provider to make sure the extended timeframe would be allowed.

13. How does health insurance coverage work during this delicate time with the COVID-19 situation?

See above question. As long as premiums are paid and employees continue to meet eligibility requirements under the policies, medical insurance should not be impacted.

14. If employees go out on leave under the new law, how do we handle premiums?

As the COVID-19 Leave is a paid leave, premiums may still be deducted from payroll as usual. For the initial 10 days unpaid time, you should arrange with the employee to either agree to pay their portion of the premium when they return or have them



make direct payment to the employer for their portion of the premium in that period.

15. How do we define 50 employees...is it after the 35 employees I furloughed yesterday?

Employees on leave **do** count toward the headcount. Laid off or permanently separated employees would **not** count toward the headcount.

16. How does the Tax Credit work for Paid Sick Leave and Paid FMLA?

A tax credit is created for each calendar quarter for an amount equal to 100 percent of the qualified sick leave wages and qualified family leave wages paid by an employer during the calendar quarter, including some costs associated with providing and maintaining a group health plan during such paid leaves. Click here for more details about the [IRS Coronavirus-related Tax Credit](#).

17. If I get a Tax Credit for an employee and then have to let them go, must I pay that back?

No, the Tax Credit applies to wages paid while the employee was qualified to receive them. Subsequent changes to employment status do not affect the Tax Credit unless the wages were incorrectly paid to the employee after their eligibility to receive wages was passed.

18. Do the 80 hours have to be taken at once, or could an employee use them to supplement time while working from home? (In other words, an employee has enough work for 24 hours, but uses 16 hours of the 80 to bring his hours up to 40--would this be acceptable?)

The Emergency Sick Leave Act is intended as Sick Pay, not as a way to supplement wages due to reduced work volume. However, if the employee is working from home due to their own illness or due to providing care for another, then those worked hours could be deducted from the 80 and thereby extend the number of days the 80 hours covers. Hours do not have to be taken all at once.

19. Can an employer ask for doctor's notes to prove valid reasons for absence?

The Act does not require employees to provide medical or other verification documenting the need for leave. Medical certification will not be required to qualify for the Emergency Sick Pay payments. Further, multiple agencies including the CDC and OSHA have indicated because many clinics and health care providers may be too busy during and after the COVID-19 pandemic to provide such documentation in



a timely manner. However, an employer may require the employee to follow “reasonable” notice procedures of an employee’s need for leave in order to continue receiving emergency sick time.

20. What proof will an employer have to provide when applying for tax credit?

The FFCRA states that “qualified sick leave wages” means wages which meet Section 3121(a) and Section 3231(e) of the Internal Revenue Code. The credit application process has not yet been fully explained, but we expect that there will be a box provided on future tax forms asking for this information or a supplemental form. If audited, they would need to show that payments were made to employees out on leave.

21. Job Reinstatement rights under Emergency FMLA expansion mention groups below 25 being excused from reinstatement under certain circumstances. Typically, these employees don’t have to comply with FMLA, so does that mean that they all have to comply with just the Emergency FMLA section moving forward?

Employers with under 25 employees are excluded from the job restoration requirement of the FMLA provided that (A) the leave was taken under the Expanded FMLA, (B) the position previously held by the employee no longer exists due to economic conditions or to changes in the operating conditions of the employer, (C) the employer has made reasonable efforts to restore the employee to their same or equivalent position, and (D) the employer makes reasonable effort later on to contact the employee, if such a position becomes available later on.

22. Should employers consider this an additional 12 week of FMLA (so an employee gets 12 weeks to care for a child whose school is closed due to COVID-19, and another 12 weeks due to surgery) or should it just be considered another reason for FMLA during the remainder of this calendar year?

This should be considered as another reason to take FMLA and not as an additional 12-week extension. If an employee has already exhausted their 12 weeks for the rolling 12-month period, then they would not qualify for additional FMLA time due to COVID. They may however qualify for the 80 hours Emergency Sick Leave provision.

23. I understand employers with 1-499 employees are covered. Do those employees need to be within a 75-mile radius of one another or does that not apply?



The FFCRA provisions waive the standard FMLA requirements of 1,250 hours in twelve months and the 75-mile provision. These waivers apply ONLY to the FFCRA expansion; all other FMLA qualifying conditions must still meet the established FMLA requirements.

24. Do the 12 weeks of EFMLA need to be taken continuously or can they be intermittent? (For example, an employee stays home for 3 weeks, the spouse takes the next 3 and then the employee takes another 9.)

The FFCRA is silent on this. We would expect normal FMLA provisions for intermittent usage would still apply.

25. Regular FMLA allows for 12 weeks in a 12-month period. If an employee takes 80 hours of Employee Paid Sick Leave while being quarantined and then is diagnosed with COVID-19, would regular FMLA start at the end of the 80 hours or could it be retroactive to limit the job protection to 12 weeks rather than 14.

If the person is treated immediately as being out on FMLA, only the regular 12 weeks would apply, including the Emergency Sick Leave time.

26. If an employee normally worked 40+ hours per week, but now can only work 30 hours due to children being out of school, are they covered by the FMLA expansion for their lost hours? If yes, how would the 10 day exclusion work?

Although as of the date of this reply the regulations are not clear on this, we believe employees in this situation may be eligible for the FMLA extension for their lost hours, in this example 10 hours per week at the 2/3rd payment. Given the law allows for the first 10 days to be excluded, the employer could exclude the 10 hours per week in this example until the employee lost 80 hours (10 days x 8 hours per day).

27. When calculating pay due to employees, must overtime hours be included?

Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first



week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

If the employee's schedule varies from week to week, please see the answer to Question 5, because the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee.

Please keep in mind the daily and aggregate caps placed on any pay for paid sick leave and expanded family and medical leave as described in the answer to Question 7.

Please note that pay does not need to include a premium for overtime hours under either the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act.

Link to text of Families First Coronavirus Response Act (H.R. 6201):

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

Please note that state or local laws may impact the requirements of the Federal Act.

For additional COVID-19 Employer Solutions related to FFCRA, working remote, responding to a downturned market, furloughs, reductions in force and more visit our Employer Coronavirus Toolkit at: <https://www.hrserviceinc.com/employer-coronavirus-toolkit/>