



# Families First Coronavirus Response Act

March 2020

**UPDATE 3/19/2020:** The U.S. Senate approved the Families First Coronavirus Response Act (**FFCRA**) yesterday, and the bill was sent to President Trump, who signed it into law last night. The law will be effective in 15 days, on April 2, 2020.

**Emergency Family and Medical Leave Expansion Act. (FMLA Expansion Act)** Employers must provide 12 weeks of leave to eligible employees for qualifying need relating to a public health emergency.

Applies to: Employers with fewer than 500 employees

Eligible Employee: Employee who has been employed for at least 30 calendar days

Qualifying need: The employee is unable to work (or telework) due to a need for leave to care for their (under 18) son or daughter if their school or place of care is closed, or child care provider is unavailable, due to a public health emergency.

Unpaid leave: The first 10 days may be unpaid, although an employee may elect to (but employers shall not require them to) substitute paid time off benefits during this time.

Paid Leave: Employers must compensate an employee for each day of leave at no less than two-thirds the employee's regular rate of pay for the number of hours the employee normally would have been scheduled to work. The required amount of pay is capped at \$200 per day and \$10,000 in the aggregate.

Job Restoration: Employees must be restored to their position or an equivalent one upon their return to work. There is an exception to this requirement for employers with fewer than 25 employees, if the employee's position does not exist due to economic conditions or other changes in the employer's operating conditions that affect employment, which are caused by a public health emergency during the leave. In this case, the employer is required to

make reasonable efforts to restore the employee to an equivalent position and reasonable efforts to contact the employee if an equivalent position becomes available.

**Exclusions:** The Secretary of Labor has the authority to issue regulations to exclude certain health care providers and emergency responders from the definition of “eligible employee” and to exempt small businesses (defined as having fewer than 50 employees) if the leave would jeopardize the viability of the business.

Employers also may exclude employees who are health care providers or emergency responders from this emergency FMLA entitlement.

Employers with fewer than 50 employees will not be subject to liability in a private right of action by employees for failing to permit leave because of a qualifying need related to a public health emergency.

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**Emergency Paid Sick Leave Act. (EPSLA)** Employers with fewer than 500 employees must provide 14 days of paid sick time to employees for the following uses:

- To self-isolate due to a federal, state, or local quarantine or isolation order related to COVID-19.
- To self-isolate on advice of a health care provider because of COVID-19.
- To seek a medical diagnosis due to experiencing symptoms of COVID-19.
- To care for an individual under self-isolation.
- To care for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions.
- Due to experiencing substantially similar conditions to those specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

**Duration:** Full-time employees are entitled to 80 hours of paid sick leave, while part-time employees are entitled to a number of hours for paid sick leave equal to the number of hours worked, on average, over a 2-week period.

**Amount:** The compensation amount is calculated based on the greater of the employee’s regular rate of pay, federal minimum wage, or the state or local minimum wage rate where the employee is employed. However, paid sick leave is capped at \$511 per day (\$5,110 in the aggregate) when leave is taken for an employee’s own illness or quarantine, and \$200 per day (\$2,000 in the aggregate) when leave is taken to care for others or due to school closures.

Availability: Paid sick leave is available for immediate use. Emergency paid sick leave is in addition to an employer's other PTO, paid sick, and vacation benefits. Employers cannot require employees to take any other paid leave before using paid sick time under this act.

Carryover: Employees may not carry over this leave after December 31, 2020.

Exclusions: Employers may exclude employees who are health care providers or emergency responders from coverage. The Secretary of Labor has the authority to exclude certain health care providers and emergency responders from the definition of employee by, among other things, allowing them to opt out; and exempt small businesses with fewer than 50 employees from these requirements if they jeopardize the viability of the business as a going concern.

Employer Liability: Retaliation against an employee who takes paid sick leave is prohibited, and failing to pay required sick leave will be treated as a failure to pay minimum wages in violation of the Fair Labor Standard Act.

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**Employer Tax Credits for Wages Paid under Sick Leave and Family Leave Provisions.** In order to provide financial assistance to employers, the FFCRA provides a refundable tax credit for qualified wages paid by employers with fewer than 500 employees. The tax credit is allowed against the employer's portion of Social Security tax (up to a specified cap). If the credit exceeds the employer's total Social Security tax liability for all employees for any calendar quarter, the excess credit is refundable to the employer. The amount of the tax credits is determined as follows:

- *Credit for Qualified Sick Leave Wages.* For sick leave paid to an employee under the EPSLA, an employer receives a federal income tax credit for wages paid to the employee during the first 10 days of the employee's entitlement to paid sick leave under the EPSLA. The tax credit is limited to \$511 per day (or \$200 per day in cases where the employee utilizes the paid sick time off to care for others or due to school closures).
- *Credit for Qualified Family Leave Wages.* For leave paid to an employee under the FMLA Expansion Act, an employer receives a federal income tax credit for wages paid to the employee during the full term of an employee's additional leave up to the 12 weeks permitted under the FMLA Expansion Act. The tax credit is limited to \$200 per day and \$10,000 in the aggregate for each employee.

In cases where the employer maintains a qualified group health plan, an additional credit is available for the portion of the employer's qualified health plan expenses as are properly allocable to sick leave paid under the EPSLA.

In the case of self-employed individuals, the FFCRA provides refundable credits similar to those discussed under “Credit for Qualified Sick Leave Wages” and “Credit Qualified Family Leave Wages” above against a portion of the self-employment tax. In order to qualify for such credit, the self-employed individual must be a person who would be entitled to receive paid leave under the EPSLA or FMLA Expansion Act, if that self-employed individual were an employee of a third-party employer. The credit is subject to caps that are similar to those discussed above.

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**Health Plan Testing for COVID-19.** The FFCRA requires group health plans and a health insurance issuer offering group or individual health insurance coverage, including “grandfathered” plans for purposes of the Patient Protection and Affordable Care Act, during the period during which the President has declared an emergency or the Secretary has declared a public health emergency, to provide without any cost-sharing (deductibles, co-pays, or co-insurance) or other prior authorization requirements federally-approved forms of testing for COVID-19, and without any charges for office, urgent care or emergency room visits related to the testing.