

Families First Coronavirus Response Act (“FFCRA”) – What You Need to Know

Your Obligations as an Employer, Including Small Businesses

WHAT Under this federal law, covered employers must provide employees with paid sick leave (up to two weeks) or expanded family and medical leave (up to twelve weeks) for six specific COVID19 related reasons (see section below).

- For purposes of COVID19 only, this expands the federal Family and Medical Leave Act (“FMLA”) to include all employers, not just those with 50 or more employees.
- Paid sick under the FFCRA does not replace any other leave provided to an employee under Federal law, State law, local law, a collective bargaining agreement, or policy. For example, under the MA Earned Sick Time Law, most employees earn up to 40 hours of sick leave per year. If an employee is eligible for both FFCRA paid sick leave and MA earned sick leave, he or she may choose to take FFCRA leave first and save MA earned sick leave for later use.

WHEN Effective April 1, 2020 through December 31, 2020

WHO Private employers with fewer than 500 full-time and part-time employees within the United States and certain public employers

- There is a small business exemption from paying **childcare related** paid leave if:
 - You have fewer than 50 employees and
 - You can demonstrate that providing paid leave will jeopardize the viability of the business, which means you meet at least one of the following three factors:
 - Providing leave would cause the business’s expenses and financial obligations to exceed available business revenues and cause the business to cease operating at a minimal capacity; or
 - The absence of the employee requesting leave would entail a substantial risk to the financial health or operational capabilities of the business because of their specialized skills, knowledge of the business, or responsibilities; or
 - There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee leave, and these labor or services are needed for the small business to operate at a minimal capacity.
- Presently, an officer of the business must make a good faith decision about whether the company is exempt without affirmation that it is the correct one (as the United States Department of Labor (“DOL”) does not currently have an approval process.)

HOW

For any employee requesting leave, you must document information relating to the details of the leave, including employee name, leave dates, reason, statement from employee and/or health care provider.

- To notify employees of their rights under the FFCRA, you must post a [notice prepared by the Department of Labor](#) in the work locations where such notices are customarily posted. You may satisfy this requirement by emailing or direct mailing this notice to employees or posting this notice on an employee information internal or external website. This is especially important if some or all of your employees are working remotely.
- You should know that you cannot use the paid sick leave mandated under the FFCRA to satisfy paid leave entitlements that an employee may have under the employer's own paid leave policy (e.g. paid time off), unless employee agrees. Nor can you require employees to use provided or accrued paid vacation, personal, medical, or sick leave before or concurrently with the paid sick leave.
- After first two workweeks of expanded family and medical leave under the FFCRA, employer can require employee to use the employer's own paid leave policy concurrently with the expanded family and medical leave under the FFCRA
- Even if you already gave an employee paid sick leave before the FFCRA went into effect, the employer cannot deny that employee, if eligible, for paid sick leave under the FFCRA.
- If you provide health coverage that the employee is enrolled in, you must continue this coverage during the term of the leave. If the employee does not return to work at the end of their leave, an employee may no longer be eligible but could be able to continue their coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA).
- Under the FFCRA, you qualify for a tax credit as a dollar-for-dollar reimbursement of all wages paid per the FFCRA where the employee has taken leave for a FFCRA qualifying reason, up to certain per diem and aggregate payment caps. Tax credits also apply to amounts paid to maintain the employee's health insurance coverage.

WHY

One of the main purposes of the FFCRA is to enable employees to leave the workplace to help prevent the spread of COVID-19, and to accommodate temporary lifestyle changes, such as changes to a family's childcare situation, caused by COVID-19.

The purpose of accommodation for a temporary change is precisely why once an employee can return from leave, you must restore them to the same or an equivalent position. You cannot fire, discipline, or otherwise discriminate against the employee because they took leave, or because they filed a complaint related to the FFCRA.

Your Rights as an Employee

If you work for a covered employer under the FFCRA, you can receive paid sick leave for up to two weeks for one or more of the following reasons (unless you are a health care provider or emergency responder, in which case your employer may exclude you from receiving paid leave):

1. You are subject to a government quarantine or isolation order related to COVID-19;
2. You have been advised by a health care provider to self-quarantine due to COVID-19;
3. You are experiencing COVID-19 symptoms and are seeking a medical diagnosis;
4. You need to care for an individual (either an immediate family member, someone who resides in the employee's home, or someone who relies on the employee for care) who is either quarantined pursuant to a government order or has been advised by a health care provider to self-quarantine because of COVID-19
5. You need to care for a child (either under 18 years of age or a child over 18 who is disabled and cannot care for themselves because of their disability) whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19;
6. You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services (To date, no conditions have yet been identified.)

You can also receive up to 10 additional weeks of leave (2 weeks of paid sick leave and 10 weeks of expanded family and medical leave) if you have been employed for at least 30 calendar days and are unable to work because of reason no. 5 listed above.

Amount of Pay

- For above reasons (1), (2), or (3) → pay entitlement at either your regular rate or the applicable minimum wage, whichever is higher, up to \$511 daily and \$5,110 total.
- For above reasons (4) or (6) → pay entitlement at 2/3 your regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 daily and \$2,000 total.
- For above reason (5) → pay entitlement at 2/3 your regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 daily and \$12,000 total.

In most circumstances, you cannot receive paid leave while collecting unemployment benefits. Paid leave under the FFCRA is provided for situations where there is work available, but you cannot work due to a COVID19 related reason. Unemployment benefits are provided to individuals who are able and available to work but there is no work.

Intermittent Leave If You Continue to Work

- If you are working remotely or teleworking, sick leave may be used intermittently, including for increments less than a day, if the employer allows it.
- If you are still physically working at the worksite, sick leave can be used intermittently, if the employer allows it, but leave must be taken in full-day increments

- If an employee no longer has a qualifying reason for taking paid sick leave before exhausting paid sick leave, he or she may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

Return to Work

Upon return from leave, you are entitled to be restored to the same or an equivalent position. The employer cannot fire, discipline, or otherwise discriminate against the employee because you took leave, or because you filed a complaint related to the FFCRA.