

# What is the FFCRA and How Does It Impact Your Business

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# FAMILIES FIRST CORONAVIRUS RELIEF ACT



The FFCRA requires employers with fewer than 500 employees to provide their employees with certain leave benefits for specified reasons related to COVID-19.

Two distinct provisions under the FFCRA

- Emergency Paid Sick Leave Act
- Emergency Family and Medical Leave Expansion Act

Effective April 1, 2020 until December 31, 2020.

- Not applied retroactively

Department of Labor (“DOL”) has issued formal guidance, with frequent FAQs and informal guidance.

# Emergency Paid Sick Leave Act



Provides up to two weeks (80 hours) of paid sick time to qualifying employees who are unable to work or telework.

An employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 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 childcare provider is unavailable) for reasons related to COVID-19; 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.

Variable statutory payment caps in play based upon the employee's qualifying reason for paid sick leave.

# Variable Compensation



## **If employees are taking leave because they are:**

- (1) subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- (2) have been advised by a health care provider to self-quarantine related to COVID-19;
- (3) experiencing COVID-19 symptoms and are seeking a medical diagnosis

## **Then employees taking leave shall:**

- be paid 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).

# Variable Compensation



## If employees are taking leave because they are:

- (4) caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- (5) experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

## Then employees taking leave shall:

- be paid 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).

# Variable Compensation



## If employees are taking leave because they are:

- (6) caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19

## Then employees taking leave shall:

- be paid 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—two weeks of paid emergency leave followed by up to 10 weeks of paid expanded family and medical leave).

The likely overlap between the paid sick leave portion and the expanded family medical leave portion occurs with childcare.

# Emergency Family & Medical Leave Expansion Act

- Amends and expands existing FMLA
- Applies to employers with less than 500 employees
  - i.e., covers employers with less than 50 employees
  - Employers with less than 50 employees may be exempted
  - Employees need only 30 calendar days of employment
- Expanded coverage is limited to a specific coronavirus reason: leave to care for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

# Emergency Family & Medical Leave Expansion Act

- Provides up to 10 weeks (potentially 12) of paid leave to care for a child.
- First two weeks of expanded family medical leave are unpaid, unless used in conjunction with paid sick leave or with some other type of leave provided by the employer.
- Next 10 weeks of expanded family medical leave are paid at 2/3 of employee's salary, but:
  - Max of \$200 a day
  - Max of \$10,000 aggregate (but can get another \$2,000 under paid leave Act)

# Emergency Family & Medical Leave Expansion Act

- The Act does not extend the total FMLA leave available; i.e., the 12 weeks
- Usual job protection of regular FMLA
- However, job restoration does not apply to Employers with fewer than 25 Employees if:
  - Position no longer exists
  - E'r makes reasonable efforts to provide equivalent position
  - E'r continues to make reasonable efforts for one year to provide equivalent position

# Benefits for Employers



- Helps protect workforce
- Maintains a degree of control over workforce
- Cost can be offset by payroll tax credit

## Payroll Tax Credit

- Employer portion of both FICA and Medicare Tax Subject to Credit
- Employee Portion is not subject to Credit
- Credit may be taken throughout 2020 and it is refundable, so any deficiency in the credit may be repaid in cash to Employer
- Not limited to tax on employees receiving paid leave

# Useful Links



<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

<https://nsba.biz/COVID-19>

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I gratefully acknowledge material assistance from my former law firm, Frantz Ward, LLP, [www.frantzward.com](http://www.frantzward.com), in Cleveland, OH.

# COVID-19 Advice, Support and Additional Webinars



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