

# Families First Coronavirus Response Act

## What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

The Families First Coronavirus Response Act (“FFCRA”) was signed into law on March 18, 2020.

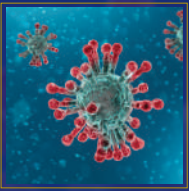
- **Purpose:** Temporary relief to eligible employees off of work because of the COVID-19 pandemic.
- **Effective Date:** The DOL will announce the official effective date, but it will be on or before April 2, 2020.
- **Coverage:** Employers with fewer than 500 employees (and some government entities).
- **Two Laws under the FFCRA:**
  - (1) Emergency Paid Sick Leave Act.
  - (2) Emergency Family and Medical Leave Expansion Act
- **Emergency Paid Sick Leave Act:**
  - Up to *80 hours* (pro-rated for part-timers) of *paid sick leave*, available for immediate use *regardless of length of employment*.
  - Available if the employee cannot work (or telework) because he/she:
    - » Is experiencing symptoms of COVID-19 and seeking a medical diagnosis → paid at 100%, capped at \$511 per day/\$5,110 in the aggregate;
    - » Is subject to a government quarantine or has been told by a health care provider that he/she should self-quarantine due to COVID-19 → paid at 100%, capped at \$511 per day/\$5,110 in the aggregate;
    - » Is assisting an individual who must quarantine/self-quarantine due to the above reasons → paid at 2/3 the employee’s rate, capped at \$200 per day/\$2,000 in the aggregate;
    - » Is caring for a son or daughter if his/her school/child care provider is unavailable due to COVID-19 → paid at 2/3 the employee’s rate, capped at \$200 per day/\$2,000 in the aggregate; *or*
    - » Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services → paid at 2/3 the employee’s rate, and capped at \$200 per day/ \$2,000 in the aggregate.
- **Emergency Family and Medical Leave Expansion Act:**
  - Up to *12 weeks of expanded FMLA leave*.
  - Unpaid during the first 10 days (but which are practically covered by the Emergency Paid Sick Leave Act)
  - After the first 10 days, paid at 2/3 the employee’s rate (but capped at \$200 per day/\$10,000 in the aggregate).
  - Available to anyone after 30 days of employment for time to care for the employee’s son or daughter, if the child’s school/child care provider is unavailable due to COVID-19 and the employee is unable to work (or telework).
- **Other Key Points:**
  - **DOL Guidance:** The DOL plans to issue guidance and implementing guidelines sometime during the week of March 23, 2020.
  - **Non-use of concurrent leave:** Although the law is not clear, it appears that an employer *cannot* force employees to use other forms of leave concurrently with FFCRA leave.
  - **Notice:** Covered employers must post a notice to employees about their



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rights under the FFCRA (at least as to the Emergency Paid Sick Leave Act) once the DOL prepares it.

- **Expiration:** The legislation expires December 31, 2020; unused time would *not* carry over from one year to the next.
  - **Exemptions for Small Businesses:** The Secretary of Labor is empowered to exempt small businesses (fewer than 50 employees) from the leave benefits if the requirements would jeopardize the viability of the business as a going concern.
  - **Changing Leave Policies:** Employers may not change paid leave policies once the legislation is enacted to avoid being subject to the FFCRA's paid sick time provisions.
  - **Exclusions:** An employer may elect to exclude health care providers and emergency responders from the leave benefits.
  - **Contributions to Multiemployer Plans Count:** For Emergency Paid Sick Leave, an employer satisfies the legal requirements to provide such paid sick leave to collectively bargained employees if it contributes to a multiemployer plan that pays sick leave to such employees. Similarly, for Emergency Family Medical Leave, an employer satisfies the legal requirements to provide such paid FMLA leave to collectively bargained employees if it contributes to a multiemployer plan that pays for FMLA leave. Contributions to other types of multiemployer benefit plans do not count for purposes of complying with these laws.
- **Tax Credits:** The FFCRA provides tax credits to help cover the benefit cost.
- Credits are computed on a quarterly basis.
  - The employer would take the total amount of qualified sick leave wages paid (in the first two weeks) and qualified family leave wages paid (in the following 10 weeks) during that quarter, and use that as a credit against the employer-portion of the social security taxes (at 6.2%) that would otherwise be due.
  - Any excess amounts above and beyond the employer-portion of the social security taxes would be refunded as a credit (as if the employer had overpaid the employer-portion of the social security taxes for that period).
  - In effect then, the government will provide a credit against the employer-portion of the social security taxes that would otherwise be due from the employer as follows:
    1. First, against the social security taxes due for the given period, and
    2. Second, as a refund as if the excess was an overpayment by the employer of the employer-portion of the social security taxes.

For purposes of computing the amount of the credit, there are two relevant periods:

- First two weeks (this credit relates to qualified sick leave wages paid). The credit amount depends on whether the employee is sick or is caring for a sick family member or providing childcare to the employee's child:
  - » Employee Sick: The credit is the lesser of the daily wage or \$511 per employee, per day, for 10 days.
  - » Providing Care to Family Member/Childcare to Child: The credit is the lesser of the daily wage or \$200 per employee, per day, for 10 days.
- Next 10 Weeks (this credit relates to qualified family leave wages paid): The credit is the lesser of the daily wage or \$200 per employee, per day, with the credit capped at \$10,000 per employee for a given calendar quarter.

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