



Families First Coronavirus Response Act Summary

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide employees with expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor's Wage and Hour Division administers and enforces the new law's paid leave requirements. LC Staffing has prepared this summary to help support our clients and to assist you with plans and solutions to protect both your company and your employees.

On March 19, 2020, the *Families First Coronavirus Response Act* was passed by the Senate and signed by President Trump. The Act provides for two paid leaves that employers across the United States must provide to employees in response to the coronavirus pandemic. This new legislation includes *extended FMLA benefits* and *paid sick leave* to employees and provides incentives to employers to help with the cost of the leave requirements.

The new law takes effect no later than April 1, 2020 and will remain effective until December 31, 2020.

Notice requirements: Employers must post a notice that advises employees of their rights under the Act. The Secretary of Labor is required to create a notice by April 1, 2020.

In short summary, the Act provides that employees of covered employers are eligible for:

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (from Federal, State, or local government order or advice of health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay* because the employee is unable to work due to a bona fide need to care for an individual subject to quarantine (from Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, or
- *Up to 10 additional weeks of **expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Covered Employers: The expanded family and medical leave provisions of the FFCRA apply to private employers with *fewer than 500* employees and certain public employers. Small businesses with fewer than 50 employees may qualify for exemption from the paid leave requirements due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern. At this time, it is unclear what measure, if any, will be implemented concerning large employers with 500 or more employees.

Eligible Employees: *All employees* of covered employers are eligible for *two weeks of paid sick leave* for specified reasons related to COVID-19. Employees *employed for at least 30 days* are eligible for up to an additional 10 weeks of *paid family leave* to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19.

Employee Notice to Employer: Employers may *not* require employees to provide advance notice that the employee is taking paid sick leave under the Act. Where leave is foreseeable, an employee should provide notice of leave to the employer as is practicable. After the first workday of paid leave under this Act, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid leave. Employers may *not* require eligible employees to first use other paid leave provided by the employer before using paid sick leave under the Act. This leave is in addition to any paid sick leave or PTO currently provided by employers.

Qualifying Reasons for Leave: Under the FFCRA, an employee qualifies for expanded family and medical leave if the employee is unable to work (**or unable to telework**) due to a need for leave because:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine related to COVID-19;
3. The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. The employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. The employee 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. The employee 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.

Duration of Leave:

- **For reasons 1-4 and 6:** A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.
- **For reason 5:** A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.
 - On a temporary basis, the *Emergency FMLA Expansion Act* amends the FMLA and creates a new leave entitlement. For purposes of the new entitlement only, the Act alters the definition of employer to include all employers with fewer than 500 employees, and expands the definition of a covered employee to include all employees who have worked for covered employers (i.e., those with less than 500 employees) for at least 30 days.
 - Restoration to Position: For employers with *25 or more employees*, an employee returning from expanded FMLA leave is entitled to *reinstatement to the same or an equivalent position*. For employers with fewer than 25 employees, an employee returning from expanded FMLA leave is entitled to reinstatement to the position held by the employee when the leave commenced unless that position does not exist due to economic conditions or other changes in operating conditions caused by the public health emergency. In such case, the employer must make reasonable efforts to restore the employee to an equivalent position, and if those efforts fail, make reasonable efforts for at least a year to contact the employee if an equivalent position becomes available.
- Paid sick leave under this Act will not carry over from one year to the next and paid sick time ceases beginning with an employee's next scheduled work shift immediately following termination of the need for paid sick time (i.e., qualifying need).
- Employers are not required to pay out any unused Emergency Paid Sick Leave at the end of employment.

Calculation of Pay:

- **For leave reasons 1, 2, or 3:** employees taking leave are entitled to pay 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).
- **For leave reasons 4 or 6:** employees taking leave are entitled to pay 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).
- **For leave reason 5:** employees taking leave are entitled to pay 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 10-week period).
- **Full time employees:** This is calculated at their regular rate of pay (as calculated by the FLSA) or the minimum wage, whichever is greater.
- **Part-time employees:** Average number of hours worked over a two-week period. If employee works a variable schedule, it is the average number of hours they worked per day over the previous six months. If the employee has not worked this long, it is the reasonable expectation of the employee at the time of hire of the average number of hours per day the employee would normally be scheduled.
- The Secretary of Labor is required to issue guidelines to assist employers in calculating leave benefits by April 2.

SUMMARY TABLE OF FAMILIES FIRST CORONAVIRUS RELIEF ACT

Covered Reason for Leave	Benefit Length	Rate of Pay	Cap on Pay & Credits
1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19	80 hours for full time; prorated average two weeks for part time	The employee's regular rate of pay under the FLSA	\$511 per day and \$5,110 in the aggregate
2. A health care provider advised the employee to self-quarantine due to concerns related to COVID-19 (self-imposed quarantine without medical advice does not qualify under the Act);	80 hours for full time; prorated average two weeks for part time	The employee's regular rate of pay	\$511 per day and \$5,110 in the aggregate
3. The employee is experiencing symptoms of COVID-19 <i>and</i> seeking a medical diagnosis.	80 hours for full time; prorated average two weeks for part time	The employee's regular rate of pay	\$511 per day and \$5,110 in the aggregate
4. The employee is caring for an individual who is either subject to a federal, state, or local quarantine or isolation due to COVID-19 or has been advised to self-quarantine due to concerns related to COVID-19;	80 hours for full time; prorated average two weeks for part time	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate
5. The employee is caring for the employee's child whose school has been closed or place of care is unavailable due to COVID-19 precautions	12-week benefit with two-week waiting period. 40 hours per week for full time; prorated average for part time.	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$12,000 in the aggregate
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services	80 hours for full time; prorated average two weeks for part time	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate

Employer Tax Credits to Pay for Required Leave: Employers will be provided refundable tax credits against their employer portion of Social Security taxes for 100% of the qualified sick leave and family leave wages paid in accordance with the Act. Refundable credits for the employer portion (but not the employee portion) of the Old-Age, Survivors, and Disability Insurance (OASDI) component of payroll taxes (i.e., the 6.2 percent employer portion of the Social Security tax) will be provided to employers to cover wages paid to employees for time off under the below sick leave and family leave programs.

- The sick leave credit for each employee will be for wages (including qualified health plan expenses relating to those wages) of up to \$511 per day while the employee is receiving paid sick leave to care for himself or herself, or \$200 if caring for a family member or child whose school has closed. The credit will be limited to 10 days per employee per quarter.
- The family leave credit for each employee will be for wages (including qualified health plan expenses relating to those wages) of as much as \$200 per employee per day, and \$10,000 in the aggregate for all calendar quarters.
- To prevent a double benefit, employers must include the amount of credits received in their gross income.
- Any wages considered in determining the credit allowed under the below emergency provisions will reduce the Code section 45S paid family and medical leave credit established by the 2017 tax reform act available to the employer.
- Wages required to be paid under the emergency sick leave provisions will not be subject to the 6.2 percent social security payroll tax typically paid by employers on employees' wages.
- The Department of the Treasury will be authorized to issue regulations or guidance relating to the credits.

Resource Links:

- **HR 6201 – Families First Coronavirus Relief Act:** <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>
- **US Department of Labor Wage & Hour Division** – FFCRA Employee Expanded Leave Rights <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
- **Montana COVID-19 Resource Guide for Employers & Employees:** <http://dli.mt.gov/employer-covid-19>
- **Centers for Disease Control and Prevention (CDC)** Interim Guidance for Businesses and Employers: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- **The Fair Labor Standards Act of 1938, as Amended:** <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>
- **OSHA:** OSHA *Guidance on Preparing Workplaces for COVID-19* – <https://www.osha.gov/Publications/OSHA3990.pdf>
- **TPM COVID-19 Resource Site:** <https://www.timberassociation.com/covid-19-information/>
- **SHRM** Society for Human Resource Management COVID-19 Resource Center: <https://www.shrm.org/resourcesandtools/pages/communicable-diseases.aspx>