



COVID-19 HR Guide for your Practice – Frequently Asked Questions

Families First Coronavirus Response Act FAQs

(UPDATED 5/12/2020)

Dear IDOC Member,

Many of you have reached out to us with questions related to the new legislation enacted by Congress and changes to employment law. In response to your questions and needs, IDOC has created an FAQ document specific to the **Families First Coronavirus Response Act (FFCRA)**.

This document outlines what we know about the relief act as of April 1, 2020. This document will be updated regularly as new developments arise. After reviewing the FAQs enclosed in this guide, if you have any remaining questions please submit your question(s) using our COVID-19 question form, which can be found using this link - [IDOC Questions or Suggestions in Response to COVID-19](#).

For additional support, we encourage you to go to our **COVID-19 Resource Center** where you will find more tools and information related to COVID-19: <https://optometry.idoc.net/covid19>

We are here to support you through this trying time. Stay safe and healthy!

Best Regards,

IDOC HR Rapid Response Team
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Families First Coronavirus Response Act (FFCRA)

Overview

On March 18, 2020, the Families First Coronavirus Response Act (FFCRA) was signed into law in response to COVID-19. The provisions of the act are effective April 1, 2020 and will run through December 31, 2020. There are two distinct pieces of this act that impact small businesses: (1) Emergency Paid Sick Leave and (2) Emergency Family and Medical Leave. Below you will find summaries on both parts of the legislation followed by FAQs.

Emergency Paid Sick Leave (EPSL)

- Emergency Paid Sick Leave (EPSL) provides up to two weeks (up to 80 hours).
- Employees identified as full time by the Practice will receive their 80 hours.
- Employees who are identified as part time will receive their average hours – average hours in a 6-month rolling period.
- Covered employees eligible for paid sick leave include:
 - Employee subject to a Federal, State, or local quarantine or isolation order related to coronavirus;
 - Employee has been advised by health care provider to self-quarantine due to coronavirus;
 - Employee is experiencing symptoms of coronavirus;
 - Employee is caring for an individual who is subject to an order described in (1) or has been advised as described in (2);
 - Employee is caring for their child because the school is closed, or childcare provider is unavailable due to coronavirus; or
 - Employee is experiencing a similar condition specified by the Secretary of Health and Human Services.
- Employers would be required to pay employees their full wages, not to exceed \$511 per day and \$5,110 in the aggregate, for a use described in (1), (2), or (3) above.
- Employers would be required to pay employees two-thirds of their wages, not to exceed \$200 per day and \$2,000 in the aggregate, for a use described in (4), (5), or (6) above. (care for others or school closures).
- Health care providers are exempt – see *exemptions* section below for clarity.
- Leave does not apply to the loss of hours.

Emergency Family and Medical Leave Act (EFMLA)

- The Emergency Family and Medical Leave Act provides for up to an additional 10 weeks of job protected leave to employees who are unable to work (or telework) because they must care for a child (see definition above) due to school closures tied to the public health emergency.
- Small businesses may qualify for exemption for required leave due to caring for child.
- The 10 weeks are paid at 2/3s of the employee's regular rate, capped at \$200 per day and \$10,000 in total.
- **To qualify, employees must be on payroll for at least 30 calendar days**
 - Employees who have been laid off (or furloughed) need to have worked 30 of the last 60 days to be eligible on their first day back.

- Healthcare providers are *exempt* – see exemptions section below for clarity.
- Small businesses are eligible for an immediate reimbursement through a dollar for dollar tax offset against payroll taxes and the practice will receive a refund, when it has overspent on its payroll taxes.
- To take immediate advantage of the paid leave credits, businesses can retain and access funds (withholding tax deposits) that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will be announced by the IRS.

Health Care Provider Exemption

Are Optometry Practices exempt under Families First Coronavirus Response Act?

- Any person employed in the Practice can be made exempt from this leave in accordance to guidance from the U.S. Department of Labor.
- The business must demonstrate one these reasons for exemption –
 - 1) The leave requested would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity.
 - 2) The absence of an employee or employees requesting such leave would entail a "substantial risk to the financial health or operational capabilities" of the business because of the employee(s) specialized skills, knowledge of the business or responsibilities.
 - 3) 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(s) requesting leave, and these labor or services are needed for the small business to operate at a minimal capacity.
- The decision to exempt staff from the FFCRA must be made by the individual Practice owner.

Should I exempt my employees from FFCRA?

- Although this is a discretionary decision, it is encouraged that Practice owners consider offering this benefit to their employees as an investment in their wellness.
- The Practice will be eligible for a 100% wage match tax credit for ALL wages paid towards FFCRA, including the EFMLA.
- The Practice can apply for exemption from the EFMLA leave – more information below.

Health Insurance

Do employees need to continue paying their share of benefits on leave?

- If the practice provides group health coverage that the employee is enrolled in, the employee is entitled to continued group health coverage during their expanded family and medical leave on the same terms as if they continued to work.
- If an employee is enrolled in family coverage, the practice must maintain coverage during the expanded family and medical leave.
- The employee would generally continue to make any normal contributions to the cost of health coverage.
- If an employee is taking paid sick leave, the employer must continue health coverage

- Under HIPAA, an employer cannot establish a rule for eligibility or set any employees premium or contribution rate based on whether the employee is actively working, unless the employee is absent from work due to a health-related illness being treated.

Compliance

What notices must I provide to my staff?

- Each employer must post employee rights and requirements to the Families First Coronavirus Response Act (FFCRA) in a place that is visible on its premises.
- Should the practice be closed, you can send the notice to employees via email or post on the Practice intranet or internal sites.
- The most recent version of this notice can be found at: <https://cdn2.hubspot.net/hubfs/4057965/COVID-19/DOL%20FFCRA%20Poster.pdf>
- Please review your states Wage and Hour Division's website or sign up for key alerts to ensure you remain current with all notice requirements: www.dol.gov/agencies/whd

Emergency Paid Sick Leave (EPSL)

What documentation do employees need to provide their employer in order to document a qualifying need for FFCRA leave?

- Your state's DOL will provide further guidance.
- However, current guidance is that if the Practice intends to claim tax credit under FFCRA for payment of sick leave or expanded family and medical leave wages, owners must get documentation from the employee.
- Please consult with any IRS applicable forms, instructions and information once they become available.
- You are not required to provide leave if applicable documentation cannot be provided.
- Employers may request appropriate supporting documentation, although given the circumstances Practice owners should allow for flexibility when it comes to asking for documentation.

By reducing staff due to my state governor's recommendation, does this fall under FFCRA?

- No, layoffs due to stay at home orders do not qualify an employee for leave under FFCRA. Employees must be employed to qualify for FFCRA sick and family leave. Leave can only be taken for the reasons listed above.

Can the leave be taken all at once?

- Employees can take Emergency Paid Leave and Emergency Family and Medical Leave can be used intermittently and incrementally if the employee and owner come to an agreement on the usage of leave.

Emergency Family and Medical Leave Act (EFMLA)

How does small business owners (under 50 employees) apply for exemption from the FFCRA?

- Businesses with under 50 employees should document why their business meets the criteria for exemption, specifically noting how one of the following situations applies:
 - Complying with reason #5 under FFCRA (employee is caring for their child because the school is closed, or childcare provider is unavailable due to coronavirus) would increase the business's operating expenses and financial obligations to a level which exceeds its revenues and causes the business to cease operating at a minimal capacity.
 - The absence of an employee would bring substantial risk to the business's financial health or operational capabilities because of specialized skills, business knowledge, or ability to fulfill specialized responsibilities.
 - There are no other workers who are able, willing, and qualified to perform the labor or services provided by the employee requesting childcare leave, and these labor or services are needed for the business to operate at a minimal capacity.
- Processes for seeking exemption are expected to be addressed in more detail through additional regulations from the Department of Labor.
- Businesses with fewer than 25 employees are not required to reinstate an employee to their position after they return from leave.
- Businesses can only seek exemption from the employees who must care for a child.

If normally I wasn't subject to FMLA, are we subject to EFMLA?

- Yes, Emergency FMLA applies to any employer with under 500 employees.
- However, if you have under 50 employees you can apply for exemption if it will jeopardize the practice – *please see above for how to apply for exemption.*

Does the FFCRA interact with existing legislation regarding Family and Medical Leave and/or Paid Sick Leave at the State and local levels?

- The Department of Labor (DOL) gives guidance that any leave taken under Emergency Paid Sick Leave (EPSL) and/or Emergency Family Medical Leave Act (EFMLA) is in addition to any other forms of sick/personal leave the employee has earned under state and local paid leave laws and ordinances offering similar protections.
- Employers are required to offer employees unpaid leave (or accrued paid leave or paid vacation) for 10 days. After this, paid leave kicks in and employees are compensated at 2/3s of their regular rate.
- Paid leave cannot exceed \$200 per day and \$10,000 total for the full 10 weeks.

How does the 2 weeks paid leave and the revised FMLA interact/overlap?

- Emergency Paid Sick Leave is for up to 80 hours due to a COVID-19 related illness, care taking, or inability to work.
- Emergency FMLA only applies if any employee is unable to work/telework due to having to care for a minor who is out of school or does not have other care, there is a 10 day elimination period with EFMLA which means that an employee could effectively (unless the Emergency Paid Sick Leave has already been exhausted) have the first 10 days paid under the Emergency Paid Sick Leave and the remaining FMLA time paid under the Emergency FMLA.
- FFCRA does not interfere with any other leave entitlements, which means the employee's actual leave entitlement could exceed leave allowed under EPSL and FMLA.

Do employees qualify for EFMLA if their doctor recommends that they don't come to work?

- An employee would only qualify for EFMLA if the leave is to care for a minor who does not have access to daycare or school.
- If the doctor's recommendation is because the employee is experiencing symptoms of coronavirus stated under Emergency Paid Sick Leave (EPSL) then they would qualify for full wages of sick pay (80 hours/2 weeks). The employee can then apply for unemployment after the sick pay is used as the employee will be under quarantine related to COVID-19.

Unemployment

If I laid off my staff before April 1st will they be eligible for FFCRA benefits?

- If, prior to the FFCRA's effective date, you stop paying your employee because of a layoff, they will not be eligible sick leave or expanded family and medical leave, but they may be eligible for unemployment insurance benefits. Check with your state's DOL.

If I lay off my staff after April 1st will they be eligible for FFCRA benefits?

- Employees must be employed by the Practice to be eligible for FFCRA benefits. They may be eligible for unemployment insurance benefits. Check with your state's DOL.

Layoffs, Furlough, Reduction in Hours

If my staff experienced a reduction in hours, do we have to pay them for 80 hours of Emergency Paid Sick Time?

- Paid sick time should be based on normal hours worked.
- Full-time employees are defined for Emergency Paid Sick Leave (ESPL) purposes as those who normally are scheduled to work 40 or more hours per week.
- An employee who is not full-time is considered part-time under EPSL.
- For part-time employees, you should calculate hours of leave based on the number of hours the employee is normally scheduled to work.
- If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours.
- Part-time employees may take paid sick leave for the average number of hours per day for up to a two-week period and may take expanded family and medical leave for the same number of hours per day up to ten (10) weeks thereafter.

If we already provide over 80 hours of sick time, do we also need to provide the FFCRA Emergency Sick Time in addition to the time already offered?

- Yes, emergency sick time as provided under FFCRA should be considered an addition to time off already provided to an employee, if employees have qualifying reason to take FFCRA leave.
- Businesses cannot require that employees use company-provided time in advance of Emergency Paid Sick Leave.

What is the difference between a furlough and a layoff?

- Furlough means temporary layoff and the employee is required to work fewer hours or take a certain amount of unpaid time off.
- Layoff means the employee is terminated from employment/payroll.
- Some states have work-sharing programs that allow employees with reduced hours to receive unemployment benefits even if they do not meet the standard requirements for unemployment.
 - Please check your state's DOL site for more information.

Can I use my PPP loan money to cover EPL or EMFL? (NEW)

- No, the PPP loan is a federal funded loan to help businesses keep staff off unemployment and reinstate them into the practice.
- There are provisions in the CARES act that states the loan money cannot be used to cover leave under FFCRA this is an employer funded leave that practices will be reimbursed on at the end of the year.

Should I provide a raise/bonus to my employees with my PPP loan money? (NEW)

- You want to be careful of how you use your PPP loan money.
- PPP Loan money covers payroll cost, including costs for employee vacation, parental, family, medical and sick leave. Therefore, you want to be mindful of how you are using the loan as we foresee the banks auditing loan users for how they are using the funds.

Vacation/Sick/Paid Time off

If an employee has exhausted their sick leave and their doctor has advised them to quarantine due to health issues, is Emergency Paid Sick Leave available to employees?

- Yes, if an employee has exhausted their PTO or sick leave, they are now entitled to an additional 80 hours/2 weeks.

The CARES Act and Changes to FFCRA

The CARES Act adds new language to the Emergency Family Medical Leave Act (EFMLA) to address leave entitlements under that provision for “rehired employees.” The new language states that for purposes of the EFMLA, the term “employed for at least 30 calendar days” includes an employee who was laid off on or after March 1, 2020, had worked for the Practice for not less than 30 of the last 60 calendar days prior to their layoff, and was rehired. Essentially, this provides that rehired employees who meet those criteria will be eligible for EFMLA without having to “restart the clock” on the 30-day requirement

- US DOL Wage & Hours Division - <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
- IRS - <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

Helpful links

- IDOC COVID-19 Resources - <https://optometry.idoc.net/covid19>
- State Labor Office - <https://www.dol.gov/agencies/whd/state/contacts#MI>
- The full details Extended Paid Sick Leave - <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
- US DOL Wage & Hour Division - <https://www.dol.gov/agencies/whd/flsa>
- Small Business Administration - <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-provide-disaster-assistance-loans-small-businesses-impacted-coronavirus-covid-19>
- DOL FFCRA Q&A - [Family First Coronavirus Response Act Q&A - https://www.dol.gov/agencies/whd/pandemic/ffcra-questions](https://www.dol.gov/agencies/whd/pandemic/ffcra-questions)
- [IRS Tax Credits for FFCRA - https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus](https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus)

Sources

- US Department of Labor - <https://www.dol.gov/agencies/whd/pandemic>
- US Department of Labor FAQs - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- Operations Inc - <https://www.operationsinc.com/>
- National Law Review
 - <https://www.natlawreview.com/article/dol-s-faqs-provide-more-details-about-small-employer-exception-under-ffcra>
- Ogletree - <https://ogletree.com/solutions/coronavirus-covid-19-resource-center/>
- AlegraGroup - <https://aleragroup.com/coronavirus/>