

Employee FAQs related to the Families First Coronavirus Response Act (FFCRA)

Q: What leave am I entitled to under FFCRA?

A: All employees (full time, part time, and seasonal) are eligible for paid leave under FFCRA for leave taken between April 1, 2020 and December 31, 2020. Generally, employers must provide up to two weeks (80 hours full time, or the equivalent two-weeks part-time) paid sick leave based on the regular rate of pay. Pay is 100% of regular pay rate if 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 symptoms of COVID-19 and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or (2) above.

Pay is at 2/3 the regular rate of pay if the employee:

1. is caring for his or her child whose school, daycare, or childcare provider is closed/unavailable due to COVID-19 related reasons; or
2. is experiencing any other substantially similar conditions specified by the US Dept. of Health and Human Services.

If the employee is caring for a child as described above, she/he may also receive an additional 10 weeks of Paid Family & Medical Leave at the same 2/3 rate of regular pay, so long as they have been employed for at least 30 days.

Q: What is an essential worker, and are nannies and other childcare providers considered essential workers?

A: Essential workers are those working in Critical Infrastructure Sectors, as designated by the Department of Homeland Security, or otherwise deemed essential by Federal, State, or Local government orders. Childcare workers may or may not be listed explicitly as essential workers. However, household employers may have jobs that are deemed essential, in which case childcare provided by the nanny may become essential if no alternative is available. If a nanny is willing and able to work in this situation, she/he should do so. The key here is that the family and nanny should have an open discussion about what is best in their situation, and both sides should remember that if the nanny is unable to work because of their own need to care for a child or loved one, they must be granted the required paid leave under FFCRA.



Q: If nannies opt not to work will they get paid sick leave (before and after 4/1)?

A: Payment for leave taken prior to April 1, 2020 is completely at the discretion of the employer. FFCRA only applies to leave taken after April 1st, and all active employees as of that date are eligible for required benefits. An employee who “opts” not to work for any reason other than those listed below is not eligible for the paid leave provided under FFCRA:

- Employee adherence to a Federal, State, or Local quarantine (or stay-in-place order)
- Employee adherence to a physicians direction to quarantine due to illness or suspected illness
- Employee is exhibiting symptoms of coronavirus and is seeking testing or treatment
- Employee is caring for a family member subject to items 1-2 above
- Employee is caring for a child whose school or daycare has closed

Q: How do I get Unemployment Benefits?

A: Employers are required by law to pay into Federal and State Unemployment Insurance programs so that their employees are protected and provided some income in the event of furloughs, layoffs, or reductions in force. While Unemployment Benefits will not replace your income in full, they will ease the financial burden while you search for other work. You can apply for benefits with your state's unemployment insurance program online.

Q: What is the difference between a Furlough, a Lay Off, and a Reduction in Force?

A: Under a furlough, an employee's hours and pay are reduced, in part or in full. The employee retains their position with the company and is still eligible to receive benefits. When furloughed, an employee can apply for unemployment benefits to provide income, meant to provide for their needs until they return to work. When an employee is laid off, the employee is temporarily separated from payroll, with the understanding that they will be recalled when work becomes available. Employees may apply for unemployment while laid off, and the employer may offer to maintain their medical benefits for some period of time as an incentive to be available for recall. A Reduction in Force occurs when a position is eliminated with no intent to refill it.

Q: If a nanny is furloughed, does the family have to pay out her accrued vacation time?

A: No, accrued leave does not have to be paid out during a furlough. However, an employer risks damaging a relationship with their employee by refusing to approve the use of paid leave that the employee has earned.



Q: Can a nanny get unemployment if she wasn't paid legally, and what does that mean for the family?

A: A nanny can file an unemployment claim at any time. If the employer did not file their unemployment taxes and wage reports, the process for obtaining benefits may be drawn out as the state investigates the employee's claim of earnings history and eligibility for benefits. The family will likely be required to file and pay their back taxes as well as penalties and interest and the state's unemployment system will alert the Internal Revenue Service as well.

Q: How can families that were off the books in 2019 fix that?

A: Employers can always go back to file and pay taxes for prior years. You will need to obtain an Federal Employer Identification Number (FEIN), open state tax accounts, complete new hire reporting, file and pay Federal taxes (Form 1040 Schedule H), State unemployment taxes, other State and Local taxes (if applicable), and possibly pay penalties and interest. HomeWork Solutions can help you get caught up on your taxes, and they are currently offering to do so at a steep discount, and for free if you sign up for their service going forward.

Q: If my hours have been reduced, do I get unemployment benefits?

A: Yes, most states do allow for unemployment claims based on a reduction in hours. You will need to visit the website of your state unemployment agency to confirm this and to file a claim for benefits.

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Q: Why should a family keep their nanny employed right now?

A: Helping employees in hard and uncertain times like this is the right thing to do. However, many household employers are facing uncertain job situations and layoffs on their own, so it is important to understand that the need for childcare might simply be gone. Employers whose need for care is reduced or eliminated only temporarily should consider the impact of a furlough to their employee and the damage it may do the relationship long term. Sticking by your employee and providing paid leave engenders trust and loyalty that will be rewarded in the future.

Most employers want to do right by their employee, and the financial relief being provided by Congress through the FFCRA should ease the burden on families and allow them to provide their nanny paid leave at no additional cost. The most important advice we can give is to have an open and honest dialogue with your employer about your concerns, about their expectations, and about how you can work together to find solutions.

Q: How will the government help offset the cost of paid leave for my employers?

A: FFCRA includes a refundable tax credit to completely offset an employer's cost of providing mandatory paid sick leave and paid family leave. FFCRA is intended to minimize the cash flow impact on employers so they can keep employees rather than reduce staff through furloughs or layoffs. We are awaiting IRS guidance on how employers can get reimbursed as quickly as possible, but employers should feel confident that they will be able to claim the credit (thus reducing their tax payments) at the time they file and pay their federal tax liabilities.

Q: Isn't there an exemption for employers with fewer than 50 employees?

A: FFCRA offers an exemption from the leave requirements relating to school closings or child care unavailability for those with fewer than 50 employees if the requirements would jeopardize the ability of the business to continue. The Treasury Department has not issued any additional guidance on this provision, but the government offer of relief provided by the FFCRA and the Cares Act is meant to eliminate the threat to the viability of a business.

Q: How is the FFCRA leave payment taxed for the employer and employee?

A: Paid Leave under FFCRA will be taxable income to the employee and normal taxes apply. Employers will be exempt from the Social Security portion of FICA, and the credit for wages paid for mandatory FFCRA leave will reimburse the employer for the Medicare portion of FICA

