



# OBSIDIAN HR

YOUR LOCAL, FULL SERVICE HR PARTNER

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) GUIDE FOR EMPLOYERS

### Key Points

- **FFCRA effective date April 1, 2020**
- **Free COVID-19 Testing:** All health care carriers must pay 100% of testing for Coronavirus and cannot implement prior-authorization requirements for Coronavirus testing.
- **Emergency Sick Leave and Emergency Expanded FMLA Leave (aka Child Care Leave):** Employees of companies with less than 500 employees are entitled to take:
  - **Sick Leave:** 90 hours of sick leave, regardless of whether or not the employee has accrued sick leave.
  - **Child Care Leave:** 12 weeks of job-protected leave, a combination of paid and unpaid leave.

## HOW IT WORKS:

### PAID SICK LEAVE

Employees employed by a company with less than 500 employees.

The Employee is currently employed (there is no required minimum days of employment)

### PAID CHILD CARE LEAVE

Employees employed by a company less than 500 employees (this is different from the FMLA's usual threshold of 50 or more employees)

The Employee worked for the company for at least 30 days before the start of leave.

Any employee that was laid off on or after March 1, 2020 and is re-hired, is deemed to have worked for the company for at least 30 days of the last 60 days



Who is covered?



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## PAID SICK LEAVE

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### Who is not covered?

Employee is employed by a company with 500 employees or more.

Employers of health care providers or emergency responders may choose not to provide paid sick leave to such employees. (See the bottom of this chart for definition of “health care providers” and “emergency responders”).

Small business exception: If the employer has less than 50 employees and paid sick leave is requested because the employee’s child’s school/place of care is closed because of COVID-19 related reasons, the employer may choose not to provide such sick leave if an officer of the company determines one of the following conditions would occur:

- Providing such leave will result in the company’s expenses and financial obligations exceeding available business revenues and cause the company to operate at a minimal capacity;
- The absence of the employee(s) requesting such leave would entail a substantial risk to the financial health or operational capabilities of the company because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not enough workers able, willing and qualified and who will be available at the time and place needed, to perform the responsibilities of the employee(s) requesting such leave and those responsibilities are needed for the company to operate at a minimal capacity.

Employees employed by a company with 500 employees or more.

Employers of health care providers or emergency responders may choose not to provide paid child care leave to such employees. (See the bottom of this chart for definition of “health care providers” and “emergency responders”).

Small business exception: If the employer (including a religion or nonprofit org) has less than 50 employees and paid child care leave is requested because the employee’s child’s school/place of care is closed because of COVID-19 related reasons, the employer may choose not to provide such leave if an officer of the company determines one of the following conditions would occur:

- Providing such leave will result in the company’s expenses and financial obligations exceeding available business revenues and cause the company to operate at a minimal capacity;
- The absence of the employee(s) requesting such leave would entail a substantial risk to the financial health or operational capabilities of the company because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not enough workers able, willing and qualified and who will be available at the time and place needed, to perform the responsibilities of the employee(s) requesting such leave and those responsibilities are needed for the company to operate at a minimal capacity.



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### How does it work?

Covered Employee may take up to 80 hours (pro-rated for part-time employees) of paid sick leave if employee is unable to work (or telework) for any of the five reasons:

- Employee is subject to a federal, state, or local quarantine, or ordered by a health care provider to self-quarantine (employee entitled to its full salary, but capped at \$511 per day and \$5,110 total)
- Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis (employee entitled to its full salary, but capped at \$511 per day and \$5,110 total)
- Employee is caring for an individual who must self-quarantine (employee is entitled to 2/3 of the employee's pay but capped at \$200 per day and \$2,000 total)
- Employee is caring for a child under 18 years old because the child's school or child care is unavailable due to COVID-19 (employee is entitled to 2/3 of the employee's pay but capped at \$200 per day and \$2,000 total)
- Employee is experiencing "substantially similar conditions specified by the Secretary of Health and Human Services". (employee is entitled to 2/3 of the employee's pay but capped at \$200 per day and \$2,000 total)

Employers cannot require employees to use other paid leave before using paid COVID-19 sick leave.

COVID-19 sick leave is in addition to any existing sick leave policy provided by employers as of March 18, 2020. Employer cannot change sick leave policy because of this act.

Sick leave will not carry over to 2021.

Covered Employee may take up to 12 weeks of job-protected leave if the employee is unable to work (or telework) because:

- Employee must care for the employee's child under the age of 18 years old because the child's school or child care facility/program has closed due to COVID-19

The first ten (10) days of such leave will be unpaid, unless the employee chooses to substitute accrued vacation, personal leave or sick leave. The employer cannot require an employee to do so. The employee can also elect to use 80 hours of paid COVID-19 sick leave.

After the first 10 days, employees are entitled to paid child care leave for the next 10 weeks at two-thirds (2/3) the employee's pay rate, but capped at \$200 per day, up to \$10,000 total.

Part-time employees must be paid based on the average number of hours worked for the six months prior to taking this leave. Employees who have not worked for at least six months prior to taking this leave may receive an amount equal to their reasonable expectation at hiring of the average number of hours the employee would ordinarily be scheduled to work.



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### Cost for Paid Leave

Employers can retain and access funds they would otherwise pay to the IRS in payroll taxes (employee's share of Social Security and Medicare taxes and the employer's share of Social Security and Medicare taxes for all employees).

Ex: If an employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, the employer could use up to \$5,000 of the \$8,000 in taxes it was going to deposit for the sick leave benefits. The employer would be required to deposit the remaining \$3,000 on its next regular deposit date.

If there is not enough payroll taxes to cover the cost of sick leave, employers will be able to file a request for an accelerated payment from the IRS, which expects to process such requests in two weeks or less. The IRS has stated that it will provide more information on how to file such a request during the week of 3/23/20.

Ex: If an employer paid \$5,000 in sick leave and is required to deposit \$6,000 in payroll taxes, the employer can use the entire \$5,000 of taxes toward the sick leave benefit and file a request for an accelerated credit for the remaining \$1,000.

Employers can retain and access funds they would otherwise pay to the IRS in payroll taxes (employee's share of Social Security and Medicare taxes and the employer's share of Social Security and Medicare taxes for all employees).

Ex: If an employer paid \$5,000 in leave and is otherwise required to deposit \$8,000 in payroll taxes, the employer could use up to \$5,000 of the \$8,000 in taxes it was going to deposit for the child care benefits. The employer would be required to deposit the remaining \$3,000 on its next regular deposit date.

If there is not enough payroll taxes to cover the cost of child care leave, employers will be able to file a request for an accelerated payment from the IRS, which expects to process such requests in two weeks or less. The IRS has stated that it will provide more information on how to file such a request during the week of 3/23/20.

Ex: If an employer paid \$10,000 in leave and is required to deposit \$8,000 in payroll taxes, the employer can use the entire \$8,000 of taxes toward the child care benefit and file a request for an accelerated credit for the remaining \$2,000.



### Return to Work

Employer with 25 or more employees must restore employee to the same or equivalent position.

Employer with less than 25 employees do not have to restore employee if certain conditions are met (e.g., position no longer exists because of economic conditions) and employer made reasonable efforts to restore the employee for a year,

Employer with 25 or more employees must restore employee to the same or equivalent position.

Employer with less than 25 employees do not have to restore employee if certain conditions are met (e.g., position no longer exists because of economic conditions) and employer made reasonable efforts to restore the employee for a year.



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### Other Regulatory Requirements

US DOL published its FFCRA notice (informing employees of their rights to emergency paid sick leave) on 3/25/20. Employers must post this notice beginning 3/26/20 in conspicuous places at work. In a situation where most employees are working remotely, employers can email the notice and post in a conspicuous place upon resumption of normal business operations.

Keep in mind this is an extension of FMLA, so traditional FMLA requirements such as extending health coverage while on FMLA is required.



### Definition of Health Care Provider and Emergency Responder

A health care provider is:

- anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any other similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions;
- any individual employed by an entity that contracts with any of the entities listed in (1) to provide services or to maintain the operation of the facility.
- anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments; and
- any individual that the Governor determines is a health care provider necessary for the state's response to COVID-19.

An emergency responder is:

- an employee who is necessary for the transport, care, health care, comfort and nutrition of such patients, or whose services are needed to limit the spread of COVID-19;
- military, national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel and those with skills or training in operating specialized equipment or skills needed to provide aid in a declared emergency including those who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility; and
- any individual that the Governor determines is an emergency responder necessary for the state's response to COVID-19.



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Temporary  
30-day non-  
enforcement  
policy

On 3/25/20, the Department of Labor (DOL) issued its guidance stating that from 3/18/20 (day the Act was signed into law) until 4/17/20, it will not bring an enforcement action against any employer for violations of the Act as long as the employer has acted "reasonably and in good faith" to comply with the Act.