

**Table of Contents**

<b>Overview: Families First Coronavirus Act (FFCRA)</b>	<b>4</b>
What is FFCRA?	4
What does FFCRA mean for employers?	4
Are benefits funded by Employers?	4
When do benefits begin?	4
What are the Employer tax credits?	5
May a tax-exempt employer receive the credits?	5
How do employers apply for the tax credits?	5
Are amounts other than qualified sick leave wages included in the tax credit?	5
Can we receive tax credit under FFCRA as well as the Employee Retention credit?	6
Can we receive tax credit under FFCRA as well as a Small Business Interruption loan?	6
Can an employee be eligible for both Emergency Paid Sick leave and FMLA?	6
What is “regular rate of pay” Paid Sick and FMLA?	6
What needs to be included in “income”?	7
Should we withhold federal employment taxes on qualified leave wages paid to employees?	7
How do we notify our employees?	7
What documents do employees need to provide?	7
What documents are employers responsible for?	7
If we close our business before April 1, are employees still eligible for Emergency leave?	8
If we close our business on/after April 1, are employees still eligible for Emergency leave?	8
If we close our business on/after April 1, what happens to employees on Emergency leave?	8
If we are open, but need to lay off or furlough employees on or after April 1, are they eligible for Emergency leave?	9
Who is a “health care provider” that may be excluded from Emergency leave benefits?	9
Can “health care providers” be partially excluded?	9
Are employees able to take Emergency leave benefits intermittently while teleworking?	10
May we deduct as a business expense the amount paid under FFCRA for which we expect to claim the tax credits?	10
May we receive credits under both section 45S of the IRS code and tax credits for qualified leave wages under the FFCRA?	10
What action is CheckWriters taking?	11

<b>Emergency FMLA Expansion</b>	<b>12</b>
What is emergency FMLA leave under this new law?	12
Does FMLA apply to employers with 50 or more, or 50 or less employees?	12
Who is eligible to take Emergency FMLA leave?	12
Under what reason may an eligible employee take the FMLA expansion leave?	13
How does emergency FMLA expansion work?	13
How does it apply to part-time hourly or variable hour employees?	13
Does job restoration apply to emergency FMLA?	13
How do we track employees on emergency FMLA?	14
Are Union employees eligible for emergency FMLA?	14
Is all leave under FMLA now paid leave?	14
Does an employee who has already utilized Family and Medical Leave Act (FMLA) also qualify for Emergency FMLA?	15
<b>Emergency Paid Sick Leave</b>	<b>15</b>
What is emergency paid sick leave under this new law?	15
Does this apply to an employer with fewer than 50 employees?	16
Which employees are eligible for emergency paid sick leave?	16
How does the emergency paid sick leave work?	16
How is this emergency paid sick leave paid?	16
We already provide vacation/sick/PTO/personal time to our employees?	17
Can an employee take 80 hours of paid sick leave for once and then again?	17
How do we track employees on emergency paid sick leave?	17
Are Union employees eligible for emergency paid sick leave?	18
Can employees take intermittent emergency sick leave while at their physical job location (as opposed to teleworking)?	18
<b>Covid-19 General</b>	<b>19</b>
If an employee is quarantined, what and to who can we share the information?	19
What are the privacy concerns when evaluating employees for possible quarantine?	19
If we reduce our workforce, what are my payment obligations?	19
What is the difference between a furlough and a layoff?	19

Is the unemployment process changing for this crisis? Are employees eligible for unemployment benefits if they are not working due to COVID-19 reasons?	20
Is an employee who contracts COVID-19 eligible for workers' compensation benefits?	21

## OVERVIEW: Families First Coronavirus Response Act (FFCRA)

- What is the FFCRA?
  - The FFCRA is recently enacted legislation aimed at addressing the economic impacts of the COVID-19 pandemic and ensuring proper medical treatment and nutrition for those affected by COVID-19. The bill was signed by the President on 3/18/2020, with an effective date of 4/1/2020.
  - This is the second in an expected series of bills that aim to stimulate economic growth and ensure proper medical treatment and nutrition for those affected by COVID-19.
  - In the coming days and weeks, federal regulatory agencies, including the Department of Labor (DOL) and Health and Human Services (HHS), will provide guidance on how to execute or implement the new requirements. In the meantime, employers and advisors must rely on a good faith interpretation of the act's text.
  
- What does the FFCRA mean for employers? How do we know if we have to comply?
  - The bill provides new employee leave benefits, including COVID-19 specific paid sick leave and expanded FMLA options for employees who work for employers with fewer than 500 employees.
  - You have fewer than 500 employees if, at the time your employee's leave is to be taken, you employ fewer than 500 full-time and part-time employees within the U.S., which includes any State of the U.S., the District of Columbia, or any territory or possession of the U.S..
  - In making this headcount determination, you should include employees on leave; temporary employees who are jointly employed by you and another employer (regardless of whether the [jointly-employed employees](#) are maintained on only your or another employer's payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship).
  - In general, two or more entities are separate employers unless they meet the [integrated employer test](#) under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of FFCRA.
  
- Are these new benefits funded by employers?
  - Yes, however, employers will be able to take advantage of payroll tax credits to offset all wage costs associated with paid emergency leave and sick leave benefits.
  - Credits will also include the amount the employer pays for the employee's health plan coverage while they are on leave.
  
- When do I have to provide these benefits to eligible employees? When is the bill effective?
  - You are able to offer paid emergency leave and paid sick time following the law's enactment on 3/18/2020; however, the employer tax credits are only expected to apply to wages paid under these benefits for usage dates of 4/1/2020 through 12/31/2020.
  - It does not appear that there is a retroactive application for dates prior to 4/1/2020.
  - While the wages can only be for periods of leave between April 1, 2020, and December 31, 2020, a payment of qualified leave wages that is made after the end of this period

may nonetheless be eligible for the credits if the wages are for leave that an employee took between April 1, 2020, and December 31, 2020.

- What are the tax credits mentioned for employers who must comply with FFCRA benefits for employees?
  - The credit amount for qualified emergency FMLA leave wages, for each employee, is capped at \$200 per day and \$10,000 for all calendar quarters.
  - The credit amount for qualified emergency paid sick leave wages for each employee:
    - In instances when an employee receives paid sick leave because they are subject to a quarantine or isolation order, have been advised by a health care provider to self-quarantine, or are experiencing coronavirus symptoms and seeking medical diagnosis, is capped at \$511 per day and \$5,110 in aggregate.
    - In instances when an employee receives paid sick leave because they are caring for another individual or child or because they are experiencing another substantially similar illness, is capped at \$200 per day and \$2,000 in aggregate.
- May a tax-exempt employer receive the credits?
  - Yes. Tax-exempt organizations that are required to provide such paid sick leave or expanded paid family and medical leave may claim the tax credits.
- How do employers apply for the tax credits?
  - Eligible employers who pay emergency leave and sick time benefits under FFCRA will be able to retain an amount of the payroll taxes equal to the amount of PAID leave that they paid, rather than deposit them with the IRS.
  - The payroll taxes that are available for credit include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.
  - If there are insufficient payroll taxes to cover the cost of emergency FMLA and sick leave, employers will be able file a request for an accelerated payment from the IRS.
  - For additional details, please visit the IRS website at <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>
- Are amounts other than qualified sick leave wages included in the tax credit for required sick leave?
  - Yes. The credit also includes the amount of the Eligible Employer's share of Medicare tax imposed on the qualified sick leave wages and any qualified health plan expenses allocable to those wages.
  - Qualified health plan expenses are amounts paid or incurred by the Eligible Employer to provide and maintain a group health plan to the extent that the amounts are excluded from the employees' gross income under section 106(a) of the Internal Revenue Code.
  - The qualified sick leave wages are not subject to the employer portion of social security tax.
  - **Note:** The credit for the employer's share of Medicare tax does not apply to Eligible Employers that are subject to Railroad Retirement Tax Act (RRTA) because qualified sick leave wages are not subject to Medicare tax under RRTA.
  - For more information about the additions to the tax credit for allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax, see "[Determining the](#)

[Amount of Allocable Qualified Health Plan Expenses,”](#) and [“Determining the Amount of the Increase to the Credits for the Eligible Employer’s Share of Medicare Tax.”](#)

- May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and the Employee Retention Credit under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)?
  - Yes, if an Eligible Employer also meets the requirements for the employee retention credit, it may receive both credits, but not for the same wage payments.
  - Section 2301 of the CARES Act allows certain employers subject to a full or partial closure order due to COVID-19 or experiencing a significant decline in gross receipts a tax credit for retaining their employees.
  - This employee retention credit is equal to 50% of qualified wages (including allocable qualified health plan expenses) paid to employees after March 12, 2020, and before January 1, 2021, up to \$10,000 in qualified wages for each employee for all calendar quarters.
  - However, the qualified wages for the employee retention credit do not include the amount of qualified leave wages for which the employer received tax credits under the FFCRA.
  
- May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and a Small Business Interruption Loan under the CARES Act?
  - Yes. However, if an Eligible Employer receives tax credits for qualified leave wages, those wages are not eligible as “payroll costs” for purposes of receiving loan forgiveness under section 1106 of the CARES Act.
  
- Could an employee be eligible for both Emergency Paid Sick leave and Emergency FMLA?
  - YES. An employee may be eligible for both types of leave, but only for a total of twelve weeks of paid leave.
  - An employee may take both paid sick leave and expanded family and medical leave to care for their child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.
  - The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the employee elects to use existing vacation, personal, or medical or sick leave under the employer’s policy.
  - After the first ten workdays have elapsed, an employee would receive 2/3 of their [regular rate of pay](#) for the hours they would have been scheduled to work in the subsequent ten weeks under the Emergency FMLA.
  - ***Please note that an employee can only receive the additional ten weeks of expanded family and medical leave under the Emergency FMLA to care for their child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.***
  
- What is an employee’s “regular rate of pay” for purposes of the FFCRA?
  - For purposes of the FFCRA, the regular rate of pay used to calculate emergency paid leave is the average of the [regular rate](#) over a period of up to six months prior to the date on which the employee takes leave.

- If the employee has not worked for their current employer for six months, the regular rate used to calculate paid leave is the average of the regular rate of pay for each week the employee has worked for the current employer.
  - If an employee is paid with commissions, tips, or piece rates, these wages will be incorporated into the above calculation.
  - The employer can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.
- What amount does an Eligible Employer receiving tax credits for qualified emergency leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) need to include in income?
    - You must include the full amount of the credits for qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of the Medicare tax on the qualified leave wages) in gross income.
- Should Eligible Employers withhold federal employment taxes on qualified leave wages paid to employees?
    - Yes. Qualified leave wages are wages subject to withholding of federal income tax and the employee's share of social security and Medicare taxes.
    - Qualified leave wages are also considered wages for purposes of other benefits that the Eligible Employer provides, such as contributions to 401(k) plans.
- How do we notify our employees?
    - Employers shall post and keep posted, in a conspicuous place, a notice of the emergency FMLA and paid sick leave requirements.
    - [The poster can be accessed at this link](#), or on the CheckWriters FFCRA Resource page.
    - In addition, [more information specific to the posting requirement can be found at this link](#), or on the CheckWriters FFCRA Resource page.
- What documents do employees need to provide in order to take Emergency leave under FFCRA? What documents are employers responsible for?
    - If the employer intends to claim a tax credit under the FFCRA, appropriate documentation must be retained.
    - The employer should receive a written request for such leave from the employee in which the employee provides:
      - Employee name;
      - Date or dates for which leave is requested;
      - A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
      - A statement that the employee is unable to work, including by means of telework, for such reason.
    - In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

- In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.
  - The employer should also create and maintain records that include the following information:
    - Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
    - Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. See FAQ 31 (["Determining the Amount of Allocable Qualified Health Plan Expenses"](#)) for methods to compute this allocation.
    - Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
    - Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the credit claimed on Form 941).
  - An Eligible Employer should keep all records of employment taxes for at least 4 years after the date the tax becomes due or is paid, whichever comes later. These should be available for IRS review.
  - *Please also note that all existing certification requirements under the traditional FMLA remain in effect.*
- If we close our business before April 1, are our employees still eligible for Emergency leave under FFCRA?
    - No. This is true whether a business closes for lack of business or because it is required to close pursuant to a Federal, State, or local directive.
    - Employees may be eligible for unemployment in this scenario.
  - If we close our business on or after April 1, are our employees still eligible for Emergency leave under FFCRA?
    - No. This is true whether a business closes for lack of business or because it is required to close pursuant to a Federal, State, or local directive.
    - Employees may be eligible for unemployment in this scenario.
  - If we close our business on or after April 1, what happens to employees who are already taking Emergency leave?
    - You must pay for any Emergency leave benefits used prior to the closing.



- This is true whether a business closes for lack of business or because it is required to close pursuant to a Federal, State, or local directive.
- Employees may be eligible for unemployment in this scenario.
- If we are open, but need to lay off or furlough employees on or after April 1, are they eligible for Emergency leave under FFCRA?
  - No. However, you must pay for any Emergency leave benefits used prior to the lay off or furlough.
  - Employees may be eligible for unemployment in this scenario.
- Who is a “health care provider” who may be excluded from the Emergency leave benefits under FFCRA?
  - The DOL has defined a health care provider as 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 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.
  - This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility.
  - This also includes 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.
  - **To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be cautious when using this definition to exempt health care providers from the provisions of the FFCRA.**
- If an Eligible Employer that employs a health care provider or an emergency responder excludes that employee from eligibility for required paid sick leave or expanded family and medical leave to be taken for one or more reasons related to COVID-19 **but not for other such reasons**, may the Eligible Employer claim the credit for paid leave it provides to that employee for any “non-excluded” reason?
  - Yes. The FFCRA provides that Eligible Employers may exclude employees who are health care providers or emergency responders from the paid sick leave and expanded family and medical leave requirements.
  - Regulations issued by the Department of Labor Wage and Hour Division define which employees are considered health care providers and emergency responders for this purpose.
  - Because an employer is not required to exclude these employees from eligibility, if an employer does not elect to exclude a health care provider or emergency responder from taking paid leave under the FFCRA for a reason related to COVID-19, it is subject to all other requirements of the FFCRA.

- *For example*, if an Eligible Employer excludes an employee who is a health care provider from taking paid sick leave to care for an individual family member, but does not exclude the employee from taking paid sick leave for reasons relating to the employee's own health status, the Eligible Employer is required to provide the employee with paid sick leave if the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
    - In this case, the Eligible Employer may claim the credit for any such qualified sick leave wages it pays to the employee, as well as the credit for allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on those qualified sick leave wages.
- Are employees able to take Emergency leave benefits intermittently while teleworking?
  - Yes, if the employer allows it and if the employee is unable to telework the normal schedule of hours due to one of the qualifying reasons for taking Emergency leave.
  - If an employee is prevented from teleworking the normal schedule of hours because of a need to care for a child whose school or childcare facility is closed, or childcare provider is unavailable, because of COVID-19 related reasons, the employee and the employer may agree that the employee can take Emergency FMLA intermittently while teleworking.
  - The increments used when taking intermittent leave must be agreed to by both the employee and employer.
  - The DOL encourages employers and employees to collaborate to achieve flexibility and meet mutual needs and is supportive of such voluntary arrangements that combine telework and intermittent leave.
- May an Eligible Employer deduct as a business expense an amount paid to an employee for qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) for which it expects to claim the tax credits?
  - Generally, an Eligible Employer's payments of qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of the Medicare tax on the qualified wages) are deductible by the Eligible Employer as ordinary and necessary business expenses in the taxable year that these wages are paid or incurred.
  - An Eligible Employer may deduct as a business expense the amounts paid to an employee for qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) for which the Eligible Employer expects to claim the tax credits under sections 7001 or 7003 of the FFCRA, if the Eligible Employer is otherwise eligible to take the deduction.
- May Eligible Employers receive credits under both section 45S of the Internal Revenue Code and tax credits for qualified leave wages under the FFCRA?
  - *Internal Revenue Code Section 45S provides a tax credit for employers who provide paid family and medical leave to their employees.*
  - There is no double benefit allowed. Under sections 7001(e)(1) and 7003(e)(1) of the FFCRA, any qualified leave wages taken into account for the tax credits may not be taken into account for purposes of determining a credit under section 45S of the Internal Revenue Code.

- Thus, an Eligible Employer may not claim a credit under section 45S with respect to the qualified sick leave wages or qualified family leave wages for which it receives a tax credit under FFCRA, but may be able to take a credit under section 45S with respect to any additional wages paid, provided the requirements of section 45S are met with respect to the additional wages.
- What action is CheckWriters taking?
  - CheckWriters will continue to remain fully operational to ensure minimal to no impact on our services.
  - We have mobilized secure remote workplace options, where applicable, to ensure that our team is safe, healthy, and in the best position to fully service our clients.
  - Our team of experts is closely monitoring COVID-19 state and national legislative developments as they pertain to our customers, and communicating these developments via the CheckWriters blog, email, social media accounts, and service team to ensure all updates are promptly provided.
  - As the workforce has migrated heavily to remote/virtual operations, and delivery disruptions have arisen amidst the crisis, we have assembled a team of our professionals to assist our clients in migrating to a paperless environment. [More resources can be found regarding that initiative here >](#)
  - In response to the FFCRA, CheckWriters automatically created four new categories of earnings codes:
    - CV Employee Sick Leave
    - CV Family Sick Leave
    - CV Paid FMLA
    - CV Unpaid FMLA (memo for hours only)
  - These categories will allow clients to track usage and pay wages where applicable through 12/31/2020, when the benefits expire.
  - In order to ensure proper tracking for the employer tax credits available for the FFCRA FMLA and Paid Sick benefits, only the CheckWriters-created codes may be used.
  - **Please also note:** it is interpreted that any FFCRA FMLA or Paid Sick usage in advance of April 1 **may not** be eligible for the employer tax credits.
  - The general interpretation of these FFCRA wages is that they constitute “Regular” pay. As such, the resulting wages and hours should be included in the following calculations:
    - Employee Retirement Plan deductions and Employer matches/contributions.
    - PTO (sick, vacation, etc.) accruals for hourly employees. This includes all state mandated sick accruals.
    - Any Other code groups that include regular pay (e.g. union deductions, custom reports, etc).
    - CheckWriters will include the wages and hours for the three (3) earnings codes (excluding the "memo hours" code) in your Retirement, PTO accruals, and Other code group calculations.
    - **Please note: if you do NOT want this to be included in your calculations, you must notify your Account Specialist prior to utilizing these codes.**

## EMERGENCY FMLA EXPANSION

- What is the emergency leave under this new law?
  - The Emergency Family and Medical Leave Expansion Act uses the existing Family and Medical Leave Act (FMLA) as a framework to provide certain employees with the right to take up to 12 weeks of job-protected leave.
  - Under the bill, eligible employees may take leave if the employee is unable to work (or telework) because they must care for a child (under 18 years of age) whose school or daycare provider is closed or unavailable due to a coronavirus emergency as declared by a Federal, State, or local authority.
  
- But I thought FMLA applied to employers of 50 or more? What about for businesses under 50 employees?
  - For traditional FMLA, this is correct. However, as part of the emergency FMLA expansion, all employers with 500 or less employees are included.
  - Small businesses with fewer than 50 employees may be exempted from offering emergency FMLA expansion benefits when the imposition of such requirements would jeopardize the viability of the business.
  - A small business may claim this exemption if an authorized officer of the business has determined that one of the following is true:
    - The provision of paid sick leave or expanded family and medical leave 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;
    - The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities;
    - 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 or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.
  
- Who is eligible to take this new leave?
  - Eligible employees include those who work for employers with fewer than 500 employees and who have been employed for at least 30 day:
    - An employee is considered to have been employed by an employer for at least 30 calendar days if the employer had them on payroll for the 30 calendar days immediately prior to the day their leave would begin.
    - For example, if an employee wants to take leave on April 1, 2020, they would need to have been on their employer's payroll as of March 2, 2020.
    - If an employee has been working for a company as a temporary employee, and the company subsequently hires them on a full-time basis, they may count any days previously worked as a temporary employee toward this 30-day eligibility period.

- Employees who are health care providers (*please see the detailed definition included in the **Overview** section of this FAQ*) or emergency responders may be excluded from eligibility.
- What reason may an eligible employee take the emergency FMLA expansion leave?
  - Eligible employees may take leave if the employee is unable to work (or telework) because they must care for a child (under 18 years of age) whose school or daycare provider is closed or unavailable due to a coronavirus emergency as declared by a Federal, State, or local authority.
- How does the emergency FMLA expansion work?
  - The first 10 days in which an employee takes emergency leave may be unpaid.
  - An employee may elect to substitute any accrued paid vacation, sick, or personal time for unpaid leave. In some cases, emergency paid sick leave may apply (**see more details below in the EMERGENCY PAID SICK LEAVE section**).
  - After 10 days of unpaid leave, an employer is required to provide paid leave at an amount not less than two-thirds of an employee's regular rate of pay up to \$200 per day or \$10,000 in the aggregate.
  - Both the unpaid 10-day period (10 workdays, or 2-week calendar period), and the period following should not exceed more than 12 weeks of total leave.
  - Employees are paid for hours they would have been normally scheduled to work even if that is more than 40 hours in a week.
  - Please note that pay does not need to include a premium for overtime hours.
- How does it work for my part-time hourly or variable hour employees?
  - Part-time or variable hour employees are entitled to leave for the average number of work hours in a two-week period:
    - You 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.
    - If the employee did not work in the preceding six-month period, the paid leave rate should equal the "reasonable expectation" of the employee at the time of hiring with respect to the average number of hours per day that the employee would be scheduled to work.
    - Such a part-time employee may take paid sick leave for this 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 weeks after that.
  - **Please note that pay *does not* need to include a premium for overtime hours.**
- What about job restoration under emergency FMLA?
  - Generally, eligible employees who take emergency paid leave are entitled to be restored to the position they held when the leave commenced or to obtain an equivalent position with their employer.
  - Employers with fewer than 25 employees, however, do not need to return the employee to their position if:

- The position does not exist due to changes in the employer’s economic or operating condition that affect employment and were caused by the coronavirus emergency.
    - The employer makes “reasonable efforts” to restore the employee to an equivalent position; and
    - If these efforts fail, the employer makes an additional reasonable effort to contact the employee if an equivalent position becomes available within the one-year window beginning on the earlier of (a) the date on which the employee no longer needs to take leave to care for the child or (b) 12 weeks after the employee’s paid leave commences.
- How do we keep track of employees on emergency FMLA leave?
  - It is not anticipated that FFCRA-specific FMLA forms will be produced, however guidance was issued on what documentation an employer needs to retain in order to verify the eligibility of the tax credits under Emergency leave. *Please see “What documents do employees need to provide in order to take Emergency leave under FFCRA?” on page 5.*
  - Regarding Payroll: CheckWriters automatically created two new categories of earnings codes for emergency FMLA:
    - CV Paid FMLA
    - CV Unpaid FMLA (memo for hours only)
  - These categories will allow clients to track usage and pay wages where applicable through 12/31/2020, when the benefits expire.
  - In order to ensure proper tracking for the employer tax credits available for the FFCRA FMLA and Paid Sick benefits, only the CheckWriters-created codes may be used. **Please also note:** it is interpreted that any FFCRA FMLA or Paid Sick usage in advance of April 1 **may not** be eligible for the employer tax credits.
  - The general interpretation of these FFCRA wages is that they constitute “Regular” pay. As such, the resulting wages and hours should be included in the following calculations:
    - Employee Retirement Plan deductions and Employer matches/contributions.
    - PTO (sick, vacation, etc.) accruals for hourly employees. This includes all state mandated sick accruals.
    - Any Other code groups that include regular pay (e.g. union deductions, custom reports, etc).
    - CheckWriters will include the wages and hours for the three (3) earnings codes (excluding the "memo hours" code) in your Retirement, PTO accruals, and Other code group calculations.
    - **Please note: if you do NOT want this to be included in your calculations, you must notify your Account Specialist prior to utilizing these codes.**
- What about unionized employees? Are they eligible for emergency FMLA?
  - Yes, under the same conditions as any other eligible employee.
- Is all leave under the FMLA now paid leave?

- No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days.
- This includes only leave taken because the employee must care for a child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.
- Does an employee who has already used some or all of their available leave under the Family and Medical Leave Act (FMLA) also qualify for Emergency FMLA under FFCRA?
  - Eligible employees are entitled to Emergency Paid Sick leave under the regardless of how much leave they have taken under traditional FMLA.
  - However, if you were an FMLA compliant Employer prior to the April 1 FMLA expansion, your eligible employees may only take a total of 12 weeks for FMLA or Emergency FMLA during a 12-month period.
  - If an employees has taken some, but not all, of the 12 weeks of traditional FMLA during the current 12-month period determined by the employer, the employee may take the remaining portion of leave available if they qualify for Emergency FMLA.
  - If an employee has already taken 12 weeks of traditional FMLA leave during this 12-month period, they may not take additional Emergency FMLA leave.

### EMERGENCY PAID SICK LEAVE

- What is the Emergency Paid Sick Leave portion of FFCRA?
  - This requires certain employers to provide employees with two weeks of paid sick time if the employee is unable to work (or telework) for the following coronavirus-related reasons:
    - The employee is subject to a Federal, State, or local quarantine or isolation order related to the coronavirus.
    - The employee has been advised by a health care provider to self-quarantine due to concerns related to the coronavirus.
    - The employee is experiencing symptoms of coronavirus and is seeking a medical diagnosis;
    - The employee is caring for an individual who is subject to a quarantine or isolation order or advised to self-quarantine by a health care provider;
    - The employee is caring for a child whose school or daycare provider is closed or unavailable due to coronavirus precautions; and
    - The employee is experiencing any other condition substantially similar to the coronavirus, as specified by the U.S. Department of Health and Human Services (HHS).
- What if we are a small business with fewer than 50 employees?
  - Small businesses with fewer than 50 employees may be exempted from the bill's paid leave requirements if those requirements would jeopardize the viability of the business.
  - A small business may claim this exemption if an authorized officer of the business has determined that one of the following is true:
    - The provision of paid sick leave or expanded family and medical leave 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;

- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities;
  - 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 or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.
- What employees are eligible for the emergency paid sick leave?
    - All employees (regardless how long they have been employed) are eligible for emergency paid sick leave if working for a covered employer.
    - There is an exception for health care providers (*please see the detailed definition in the **Overview** section of this FAQ*) and emergency responders.
  - How does the emergency paid sick leave work?
    - Full-time employees are entitled to 80 hours of paid sick leave.
    - Part-time employees are entitled to leave for the average number of work hours in a two-week period:
      - You 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.
      - Such a part-time employee may take paid sick leave for this 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 weeks after that (*only in the case that the employee qualifies for emergency FMLA as well*).
    - Sick leave is paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.
    - **Please note that pay *does not* need to include a premium for overtime hours.**
    - Once an employee's coronavirus-related need for using the emergency paid sick leave ends, then the employer may terminate the paid sick time.
    - Emergency paid sick time cannot carry over from one year to the next.
  - How is this leave paid?
    - Employees who take paid sick leave because:
      - They are subject to a quarantine or isolation order
      - They have been advised by a health care provider to self-quarantine
      - They are experiencing coronavirus symptoms and seeking medical diagnosis



- They are to be paid at their regular pay rate or at the federal, state or local minimum wage, whichever is greater.
  - In these circumstances, the paid sick leave rate may not exceed \$511 per day, or \$5,110 in aggregate.
  - Employees who take paid sick leave because:
    - The employee is caring for an individual who is subject to a quarantine or isolation order or advised to self-quarantine by a health care provider
    - The employee is caring for a child whose school or care provider is closed or unavailable due to coronavirus precautions
    - The employee is experiencing any other condition substantially similar to the coronavirus, as specified by the U.S. Department of Health and Human Services (HHS)
  - They are to be paid at two-thirds their regular rate.
  - In these circumstances, the paid sick leave rate may not exceed \$200 per day, or \$2,000 in aggregate.
- But we already provide vacation/sick/PTO/personal time to our employees.
    - This time may also be used if applicable; however, an employer **may not require an employee to use other paid leave provided by the employer *before* using the emergency paid sick time.**
- Can an employee take 80 hours of paid sick leave for self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?
    - No. An employee may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons.
    - However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.
- How do we keep track of employees using emergency paid sick leave?
    - After the first workday that an employee receives emergency paid sick time, an employer may require the employee to follow “reasonable notice procedures” in order to continue receiving paid sick time.
    - Regarding Payroll, CheckWriters automatically created two new categories of earnings codes for paid sick leave:
      - CV Employee Sick Leave
      - CV Family Sick Leave
    - These categories will allow clients to track usage and pay wages where applicable through 12/31/2020, when the benefits expire.
    - In order to ensure proper tracking for the employer tax credits available for the FFCRA FMLA and Paid Sick benefits, only the CheckWriters-created codes may be used. **Please also note:** it is interpreted that any FFCRA FMLA or Paid Sick usage in advance of April 1 **may not** be eligible for the employer tax credits.

- The general interpretation of these FFCRA wages is that they constitute “Regular” pay. As such, the resulting wages and hours should be included in the following calculations:
  - Employee Retirement Plan deductions and Employer matches/contributions.
  - PTO (sick, vacation, etc.) accruals for hourly employees. This includes all state mandated sick accruals.
  - Any Other code groups that include regular pay (e.g. union deductions, custom reports, etc).
  - CheckWriters will include the wages and hours for the three (3) earnings codes (excluding the "memo hours" code) in your Retirement, PTO accruals, and Other code group calculations.
  - **Please note: if you do NOT want this to be included in your calculations, you must notify your Account Specialist prior to utilizing these codes.**
  
- What about unionized employees? Are they eligible for emergency paid sick leave?
  - Yes, under the same conditions as any other eligible employee.
  
- Can employees take EmergencyPaid Sick Leave intermittently while working at their physical job location (as opposed to teleworking – *details on taking leave intermittently while teleworking are in the **Overview** section of this FAQ*)?
  - It depends on why the employee is taking EmergencyPaid Sick Leave and whether the employer agrees.
  - Unless the employee is teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments.
  - It cannot be taken intermittently if the leave is being taken because the employee is:
    - subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
    - advised by a health care provider to self-quarantine due to concerns related to COVID-19;
    - experiencing symptoms of COVID-19 and seeking a medical diagnosis;
    - caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
    - experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
  - Unless the employee is teleworking, once the employee begins taking paid sick leave for one or more of the qualifying reasons, the employer must continue to take paid sick leave each day until the employee either:
    - uses the full amount of paid sick leave, or
    - no longer has a qualifying reason for taking paid sick leave.
  - If an employee no longer has a qualifying reason for taking paid sick leave before the employee exhausts the available paid sick leave, the employee may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

- Emergency paid sick leave may be taken intermittently if the employee is taking paid sick leave to care for your child whose school or place of care is closed, or whose childcare provider is unavailable, because of COVID-19 related reasons.
  - The employer and employee must agree on the parameters of this in advance of the leave being taken intermittently.
- The Department encourages employers and employees to collaborate to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on less than a full work day for employees taking paid sick leave to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19-related reasons, the Department is supportive of such voluntary arrangements.

### **COVID-19 – GENERAL**

- If one of our employees is quarantined, what information can we share with our employees?  
Who can we share it with?
  - If an employee is confirmed COVID-19 positive, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace.
  - You should not, however, disclose to co-workers the identity of the quarantined employee because of confidentiality requirements under federal law, such as the Americans with Disabilities Act (ADA) and other applicable state law(s).
  
- What privacy concerns do we need to be aware of when asking for the health information of our employees in order to evaluate whether they need to be quarantined?
  - Employers may ask employees if they are experiencing COVID-19 symptoms such as fever, tiredness, cough, and shortness of breath.
  - Federal or state law may require the employer to handle the employee’s response as a confidential medical record. To help mitigate this risk, employers should maintain this information in a separate, confidential medical file and limit access to those with a valid business need to know.
  
- What are my obligations to pay employees if we reduce our workforce or hours?
  - Aside from reporting time pay, non-exempt employees are only paid for hours worked. Therefore, if furloughed or not working, they do not receive pay.
  - Exempt employees must be paid their full salaries for any workweek in which any work is performed. Therefore, an employer seeking to furlough an exempt employee should be careful to require exempt employees to take unpaid time off in full week increments and to not perform any work during the week, including working from home or reading/responding to emails or calls.
    - If any work is performed during a workweek, the exempt employee must receive their full salary (time off can be supplemented with any available paid time off such as vacation, however).
  
- What is the difference between a furlough and a layoff?
  - A furlough is a temporary leave of absence which is generally shorter in duration, in full day or week increments, as opposed to a layoff or temporary layoff.
    - During the furlough, the employees are not paid, but they are still technically employed.

- When the business reopens to full strength, furloughed employees will become active again.
    - A furlough could be seen as favorable to retain talent and reduce the cost of separation (e.g. payout of vacation balance payout) or future hiring and training.
    - Employers may treat furloughed employees to be on a “leave of absence” status and maintain benefits coverage while making employer contributions and requiring employee premium payments.
    - Employers have freedom to allow for a temporary reduction in hours, or a leave of absence, and leave coverage in place without forcing the COBRA election. Generally, this is allowable for 90 days.
    - For a sample COVID-19-specific furlough letter, please see the [CheckWriters FFCRA Resource Page](#).
    - Employees are generally eligible to apply for unemployment benefits.
  - A layoff is a separation of employment for an indefinite or permanent period.
    - During a layoff, employees are separated from employment and would be eligible to continue their benefits through COBRA.
    - Employers could choose to subsidize COBRA benefit payments for impacted employees.
    - Employees are generally eligible to apply for unemployment benefits.
- What changes are being made to the unemployment process during this crisis? Are my employees eligible to receive unemployment benefits if they are not working due to COVID-19 reasons?
  - Many state unemployment insurance programs also apply to significantly reduced work hours, temporary furloughs, and layoffs.
  - Eligibility for unemployment insurance is determined by each state.
  - **The information below provides an example of how a given state, in this case Massachusetts, may handle the unemployment issues. These details, however, may overlap with how other states may respond to COVID-19. For state-specific information, please utilize the DOL’s source for unemployment at <https://www.careeronestop.org/LocalHelp/UnemploymentBenefits/unemployment-benefits.aspx>:**
    - All requirements regarding attending seminars at the MassHire career centers have been suspended.
    - Missing deadlines due to effects of COVID-19 will be considered good cause, and lateness will be excused.
    - All appeal hearings will be held by telephone only.
    - The Department of Unemployment Assistance (DUA) may now pay unemployment benefits if:
      - A worker is quarantined due to an order by a civil authority or medical professional, or leaves employment due to reasonable risk of exposure or infection, or to care for a family member and does not intend to or is not allowed to return to work.
      - The worker does not need to provide medical documentation and only needs to be available for work when and if deemed able.
      - To assist individuals who cannot work due to the impact of COVID-19.
    - New claims are to be paid more quickly by waiving the one-week waiting period for unemployment benefits.

- The DUA is also filing emergency regulations that will allow people impacted by COVID-19 to collect unemployment in the following circumstances:
  - The workplace is shut down and expects to reopen in **four or fewer weeks**. Workers must remain in contact with their employer and be available for any work their employer may have for them that they are able to do, but do not otherwise need to be looking for work.
  - An employer may extend the period of the shutdown to eight weeks, and the employees will remain eligible for the longer period under the same conditions described above.
  - If necessary, DUA may extend these time periods.
- Employers who are impacted by COVID-19 may request up to a 60-day grace period to file quarterly reports and pay contributions.
- **Remember: Do not promise employees that they will receive unemployment. Instruct them where to go to apply and be responsive to incoming notices of claims.**
- Is an employee who contracts COVID-19 eligible for workers' compensation benefits?
  - Some employees may qualify for benefits under the workers' compensation.
  - Examples may include people who contracted the disease in the course of their employment, such as health-care workers working with COVID-19 patients, or perhaps an individual sent by the company to China for work-related activities.
  - In general, if an employee incidentally contracts the disease from a co-worker, there will likely not be workers' compensation liability.
  - **Please note that this varies by each state's statute.** Please consult with your workers' compensation carrier for more detail.

