

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

Families First Coronavirus Response Act - What We Know

UPDATED: 3/25/2020 5:00 PM

The Families First Coronavirus Response Act (H.R. 6201) was signed into law on March 18, 2020. This is the second in what is expected to be a 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.

For information on updates and changes, please check-in periodically with the [CheckWriters FFCRA Resource Page](#).

Summary

H.R. 6201 provides new employee leave benefits, including paid leave options for employees who work for employers with fewer than 500 employees (the definition for which is listed below).

Employers will be able to take advantage of new tax credits to compensate for the costs associated with the paid emergency leave and sick leave benefits created under the bill, as well as providing credits for health plan expenses affiliated with emergency and sick leave wages.

Employees will be eligible for:

- Up to 12 weeks of Emergency FMLA for school and daycare closures (10 days unpaid and then up to 10 weeks at 2/3 pay subject to daily maximums).
- Up to two weeks of Emergency Paid Sick Leave (full pay for employee, 2/3 pay for family care -both leave type payments subject to daily maximums) for illness, quarantine, or school closures.

Effective Date of Law

- The FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.
- There is no retroactive application.

Employer Size Definition

- 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 expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.

Key Elements for Employers

- Emergency FMLA expansion.
- Emergency Paid Sick Leave.
- Notice Requirements.
- Employer Payroll Tax Credits to offset the costs of the Emergency and Paid Sick Leave.
- Employer Credits for Health Plan expenses related to Emergency and Sick Leave wages.

- Group Health Plan Benefit mandate.

Emergency FMLA expansion

The framework of the existing Family and Medical Leave Act (FMLA) is utilized to provide certain employees with the right to take up to 12 weeks of job-protected leave.

Covered Employees and Employers: For purposes of this leave, the FMLA definitions of covered employees and employers has been amended. Under H.R. 6201, eligible employees include those who work for employers with fewer than 500 employees and the government.

The legislation further gives the Secretary of Labor the authority to exempt small businesses with fewer than 50 employees from the bill's paid leave requirements if those requirements would jeopardize the viability of the business. Employers will be required to document why they meet the criteria that is provided by the Department. This guidance will be addressed in detail in a forthcoming regulation.

Employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan may access emergency paid leave.

Any employee who has been employed for at least 30 calendar days, although employers who are health care providers or emergency responders may elect to exclude their employees from the emergency FMLA provisions of the bill.

Covered Leave Purpose: 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.

Duration:

- Up to 12 weeks of job-protected leave.
- A full time employees is entitled to 80 hours of paid sick leave.

- A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, 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.

Compensation/Rate of Pay:

- The first 10 days in which an employee takes emergency leave may be unpaid. An employee may elect, to substitute any accrued paid vacation leave, personal leave, or medical or sick leave for unpaid leave.
- After 10 days, employers must pay 2/3 of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total.
- 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.

Reinstatement to Position After Leave: The same reinstatement provisions apply as under traditional FMLA. However, restoration to position does not apply to employers with fewer than 25 employees if certain conditions are met:

- The job no longer exists because of changes affecting employment caused by an economic downturn or other operating conditions that affect employment caused by a public health emergency.
- The employer makes reasonable efforts to return the employee to an equivalent position; and
- The employer makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.

Emergency Paid Sick Leave

Covered Employees and Employers: Eligible employees include those who work for employers with fewer than 500 employees and government employers.

The legislation further gives the Secretary of Labor the authority to exempt small businesses with fewer than 50 employees from the bill's paid leave requirements if those requirements would jeopardize the viability of the business (guidance on these exemptions is expected by April 2nd). Employers will be required to document why they meet the criteria that is provided by the Department. This guidance will be addressed in detail in a forthcoming regulation.

Employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan may access emergency paid leave.

All employees (no matter how long they have been employed), although Employers who are health care providers or emergency responders may elect to exclude their employees from the emergency paid sick leave provisions of the bill.

Covered Leave Purposes: Employers must provide employees with two weeks of paid sick time if the employee is unable to work (or telework) for the following coronavirus related reasons:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to the coronavirus;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to the coronavirus;
3. The employee is experiencing symptoms of coronavirus and is seeking a medical diagnosis;
4. 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;
5. The employee is caring for a child whose school or care provider is closed or unavailable due to coronavirus precautions; or

6. 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).

Duration of Leave:

- A full time employees is entitled to 80 hours of paid sick leave.
- A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, 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.

Compensation/Rate of Pay:

- Sick leave due to reasons 1, 2, or 3 described above must be paid at the employee's regular rate of pay 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. This pay is for the employee's own illness, quarantine, or care.
- Sick leave due to reasons 4, 5, or 6 described above must be paid at two-thirds of the employee's regular rate of pay or at the federal, state or local minimum wage, whichever is greater. In these circumstances, the paid sick leave rate may not exceed \$200 per day, or \$2,000. This pay is to care for a family member or to care for a child whose school (or childcare provider) has closed or is unavailable due to the coronavirus.
- 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.

Interaction with Other Employer-Provided Paid Sick Leave and other Paid Leave:

- This act does not preempt existing state and local paid sick leave requirements.
- Employers cannot require employees to use other leave first.
- Sick leave provided for under the act does not carry over from year to year, and the requirements expire December 31, 2020.

Notice Requirements

- Employers must post a model notice:
 - 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.
- After the first workday (or portion of a day) an employee receives paid sick time, an employer may require the employee to follow “reasonable notice procedures” in order to continue receiving paid sick time.

Employer Payroll Tax Credits to offset Emergency Leave costs

- Employers will receive 100% reimbursement for all FMLA Emergency Leave and Emergency Paid Sick Leave payments.
- An immediate dollar-for-dollar tax offset against payroll taxes – employers can retain the payroll tax deposits they would otherwise pay to the IRS in an amount that does not exceed the leave payments.
- If the payroll deposits are not enough to cover the cost of paid leave, the IRS will return the shortfall amount as quickly as possible.
- The maximum reimbursement is equal to the employee payment caps for FMLA Emergency Leave and the Emergency Paid Sick Leave.
- Details on this process are anticipated in advance of April 2nd.

Credit for Health Plan Expenses

- FMLA Emergency Leave and Emergency Paid Sick Leave credits will be increased to include the amount the employer pays for the employee's health plan coverage while they are on leave.
- The employer's group health plan expense must be properly allocated to the time an employee is on leave.

Health Plan Benefit Mandate

- The act requires all insured and self-funded medical plans, including grandfathered plans, to cover diagnostic testing-related services for COVID-19 at 100 percent without any deductibles or co-pays.
- Examples include services provided by doctors, emergency rooms, and urgent care centers leading up to the decision that testing is needed, along with the actual lab-based testing.
- The mandate does not apply to treatment.

Read US [H.R. 6201](#)